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United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 330

BERTHA BUILDING CORPORATION,
Plaintiff-Appellant,

—against—

NATIONAL THEATRES CORPORATION,
Defendant-Appellee.

AND

No. 329

GUMBINER THEATRICAL ENTERPRISES, INC.,
Plaintiff-Appellant,

—against—

NATIONAL THEATRES CORPORATION,
Defendant-Appellee.

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Supplemental Opinion of Judge Rayfiel on the Separate Trial of the Issues Raised by the Defense of the Statute of Limitations

United States District Court

EASTERN DISTRICT OF NEW YORK

GUMBINER THEATRICAL ENTERPRISES, INC. *vs.* NATIONAL THEATERS CORPORATION	Civ. 12074
BERTHA BUILDING CORPORATION *vs.* NATIONAL THEATERS CORPORATION	Civ. 12073

Appearances:

CORCORAN & KOSTELANETZ, Attorneys for Plaintiff. By Boris Kostelanetz, Esq., for the motion.

DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY, Attorneys for National Theaters Corp. By Frederick W. R. Pride, in opposition.

RAYFIEL, J.

SUPPLEMENTAL MEMORANDUM

In my decision dated June 10, 1954, in the above-entitled action, believing that there was no opposition thereto, I granted plaintiff's motion for a separate trial

Supplemental Opinion of Judge Rayfiel on the Separate Trial of the Issues Raised by the Defense of the Statute of Limitations

to the Court and a jury of the issues raised by the defense of Statute of Limitation. I have since examined the applicable portion of the transcript of counsels' argument of the motion before the Court and learned that the consent of defendant's counsel was limited to a separate trial of such issues to the Court alone.

The defense of the Statute of Limitations is legal in its nature and involves issues which in my opinion the plaintiff is not entitled to have tried to the Court and jury under the 7th Amendment to the Constitution of the United States.

Accordingly my aforementioned decision is modified to that extent and I shall sign an order consistent therewith.

Dated: June 25, 1954

Signed LEO F. RAYFIEL
United States District Judge

Transcript of Record

Colloquy

[13] Mr. Pride: Well, your Honor, may I put it this [14] way: Would your Honor consider the position which we are urging here as a part of the trial, if you call it that, of this particular issue?

The Court: I will consider it as part, but not as independent of; I hope you understand that differentiation.

Mr. Pride: I, of course, want to conform entirely with what your Honor's wishes are.

I feel, your Honor, that however it be designated, that the legal aspects of the defense of the Statute of Limitations which enters into the trial of that issue of course, that in so far as they are involved with respect to the allegations of the plaintiff's complaint and the legal effect of those allegations, I respectfully submit that it is in all respects in order to bring those to your Honor's attention at the commencement of the trial.

* * *

[18] The Court: But Mr. Kostelanetz says he is ready to try this case; we should go ahead with the trial. That is what we will do.

Mr. Pride: Judge, for the record, you are not ruling by going ahead with the trial that I am precluded from bringing on this motion for judgment on the pleadings?

The Court: Not a bit. I understand your prior position to be that you could bring this on at any time during the trial, during the trial of this issue that has been sent to me.

Mr. Pride: Yes, that is right.

The Court: Very well.

* * *

[19] Mr. Kostelanetz: All right, sir.

I take it, your Honor, this being a trial without a jury, we may as well proceed with our evidence.

Colloquy

Does your Honor care for opening statements?

The Court: No, I have read the brief; I know what it is about.

I will say to you now that if it falls within the framework of Hansen versus Swift, I will dismiss the case on the ground that the defense of the Statute of Limitations would be sustained. In other words, if the facts proved here bring this case within the framework of the Hansen-Swift case, then I shall resolve this issue in favor of the defendant.

Mr. Kostelanetz: Your Honor, I think we have your Honor's perspective, but on the other hand I think that the law of the *Hansen* case will be followed here by the plaintiffs because we see it as the law.

The Court: All right.

* * *

[22] Mr. Pride: This is the subject of introduction of what apparently are certain papers from other litigations in which——

Mr. Kostelanetz: Certified and exemplified copies.

Mr. Pride: (Continuing)—from other litigations in which this company was involved.

I think and believe because the entire position of the plaintiff here with respect to any facts upon which it contends the Court should find that National Theatres was not doing business in New York and California, and because any such evidence will depend and rest entirely upon statements made at various times in other unrelated litigation which National was party, that there should be a relation of the particular cases to which reference is made to the significant periods of time as to when we claim the Statute of Limitations was running and constitutes the bar to the case.

Colloquy

Now, some of these papers, as the plaintiffs have heretofore advised us, consist of an affidavit——

The Court: Let us have specific reference to this paper, that is all.

[23] Mr. Pride: Very well.

The Court: No, I want to hear you on this paper.

Mr. Pride: Oh, I am sorry, Judge.

Why, this paper, your Honor, is a motion in a case pending in the State Court of California entitled Jensen and Von Herberg versus WESCO Corporation.

Now, your Honor, WESCO Corporation is the same corporate defendant here that is under the name of National Theatres Corporation; the name was changed.

For ease, your Honor, suppose throughout this case we just refer to it as National, its present name?

Now, your Honor, in that case the defendant here was made a party defendant.

The case was brought in 1932, September, I believe, of that year. In that case a motion was made to dismiss as to National Theatres on the ground that it was not doing business in the State of California. The exemplified copy of the paper which plaintiff offers is a copy of that motion and that affidavit.

Now, your Honor, with respect to California, the three-year statute is applicable for the purpose of this case that is pleaded by the plaintiffs.

It is the plaintiffs' contention that National could not have been sued in California in the period between 1931, when this one action arose, and 1935, when the [24] second cause of action arose; that it could not be sued there between those dates and July 20, 1938.

Now, I refer to that date, your Honor, because it has a special significance in this lawsuit. On July 20, 1938, the

United States instituted an action entitled United States against Paramount, claiming violations of the Anti-Trust Laws on a national scale by all of the various interested companies in the industry, including the defendant National.

It is the plaintiffs' position here that from and after July 20, 1938, the running of all Statutes of Limitations were tolled by reason of the application of Section 5 of the Clayton Act. In other words, that——

The Court: I understand from the brief that that is their position.

Mr. Pride: Yes.

The Court: But, of course, that would be an unsound position if at that time the Statute of Limitations had run against the plaintiffs.

Mr. Pride: Precisely.

So we say here that the significant period in the first instance in this lawsuit—and you will not have to determine the question of the Paramount case—the significant period with respect to California is a period of three years prior to the institution of the [25] Paramount case. In other words, the three years prior to July 20, 1938.

The Court: Yes, Mr. Pride, and I take it that Mr. Kostelanetz offers this exhibit to show that the position of the defendant at that particular time was that it was not doing business then.

Mr. Pride: The position which it took in this litigation in 1932.

Now, my point is that this statement, in the first place, has no—well, establishes nothing with respect to the later years, 1930 to 1938.

* * *

John P. Edmondson—Direct

[73] JOHN P. EDMONDSON, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

* * *

[105] Q. Do I understand that at these regular meetings of this Board of the Agency Corporation all substantial transactions affecting the operation of theatres in California and elsewhere were passed upon? A. Yes, sir.

Mr. Kostelanetz: I object.

The Court: I sustain the objection as to the form of the question.

* * *

[112] Q. Now, I am addressing my question, Mr. Edmondson, to this entire period from 1932 to 1942——

Mr. Kostelanetz: I am sorry.

Q. I say, do you understand that my questions apply to this entire period from 1932 to 1942? A. He had personnel; whether the same personnel were there at all times during that period, I can't say.

I have been out of the operation for fourteen years, and I am simply giving the very best evidence I can, based on my recollection. I recall certain names of the head film buyers; at one time it was Eddie Alperson, at another time it was a man by the name of Ed Zabel; there were numerous other people—Lundgren and others that were there who assisted him.

Now, as to what time they started in or dropped off, I am not clear.

Q. Yes, but you are clear that throughout this period Mr. Skouras did have assistants working for him in this field; [113] is that right? A. Yes, sir.

* * *

John P. Edmondson—Direct

[126] Q. Do you know whether Mr. Sullivan entered upon employment pursuant to the provisions of this agreement, Mr. Edmondson? A. Yes, sir, he did.

Q. And do you know how long he continued in that employment? A. I believe he continued until his death. He was not well at the time this contract was executed; as a matter of fact, he had ulcers of the stomach. One of the reasons that he did not want to leave his native heath to come here and work in this city was because of that fact, and so they put in there the provision that in event he had to spend six months here in New York, in New York City, he could terminate the contract.

Q. His home being in Los Angeles? A. Yes, sir.

* * *

[130] Mr. Kostelanetz: May I ask Mr. Edmondson:

Based upon your familiarity with these records whether or not the records record directly the action taken by the Board of Directors with respect to the matters which are contained therein?

The Witness: Yes, sir, they do. I drew, I should say, practically all of those minutes, dictated them, and I always tried to reflect just what was decided.

* * *

Cross-Examination by Mr. Kostelanetz:

[145] Q. Now, in the year 1930 and 1931, sir, were you associated in any official capacity with WESCO Corporation, then known as WESCO Corporation? A. I don't believe so, I think in that period of time I was working in the Law Department there under Mr. Rogers, and I couldn't definitely identify myself with any company. I don't believe I was an officer of any company, I was simply a kid fresh out of law school doing what they told me to do.

John P. Edmondson—Cross

Q. Now, in the year 1932, I think you testified on direct examination you became assistant secretary of WESCO? A. Yes, sir.

* * *

[160] Q. So actually you had management or a supervision company entitled Agency, which in turn had supervision companies and management companies, had its own children geographically; is that it? A. It didn't work just that way, Mr. Kostelanetz.

There was National Theatres Corporation which had a contract with the Agency Company, as we have seen here. The Fox West Coast Theatres had a subsidiary called Fox West Coast Agency Corporation. Now, that Agency Company had a contract with the National Agency Company.

Q. I see, I see. A. That was the arrangement, as I recall it. That also applied to the other divisions, such as in the mid-west and in Kansas City, in Denver and in Seattle and Milwaukee; they were the principal operating places.

* * *

[163] Mr. Pride: It is conceded in this action that the causes of action in the first case accrue——

The Court: What do you mean, in the first case?

Mr. Pride: There are two cases or causes, the Gumbiner Theatrical and the Bertha Building Company case.

It is conceded by the plaintiffs that the cause of action accrued in the Gumbiner Theatre case on December 8, 1931.

[164] The Court: I noticed you said that in your brief.

Mr. Pride: Yes, sir.

Mr. Kostelanetz: We say it in our brief, too.

The Court: Do you agree with that?

Mr. Kostelanetz: Yes, your Honor.

The Court: And the second, 1935 some time?

Mr. Pride: Yes, your Honor, July 4, 1935.

Mr. Kostelanetz: July 4, 1935, yes.

The Court: So that I may assume that in resolving this issue of Statute of Limitations that in the first, the action accrued some time in 1931, and in the second action, in 1935?

Mr. Pride: That is correct, your Honor.

The Court: Well, that helps.

Mr. Kostelanetz: That is right, your Honor.

By Mr. Kostelanetz:

Q. Now, Mr. Edmondson, on your direct examination in reply to Mr. Pride, you said something concerning the preparation of an affidavit in relation to California, or some tax action. Unfortunately, the minutes aren't here, and the stenographer has been upstairs. Could you repeat what you said, sir?

The Court: You mean as to the testimony this morning?

[165] Q. In what year was it that tax counsel came to you and [166] said that there was a tax problem? A. The tax problem was discussed at various meetings. I don't recall whether at Board Meetings or just how the problem came up.

Q. Would you state who was present, sir, at these tax problem conferences, and could you place the date? A. I can't place any specific date of conversation.

Q. The approximate date. A. I have been out of the company for, what is it, 14 years, and you are now asking me to go back to 1934 or 1935 and pinpoint a specific con-

ference on a subject, and I can't do that. I can give you my general impression of what we talked about.

Q. Well, suppose we have it in legal form, sir.

What is your recollection of the first conference on the tax problem, and who was present? A. My recollection of the problem, that came after the reorganization of the company where Chase Bank took over the majority position. Now, there were many firms of attorneys in that, and one of the firms, together with our general counsel, Dwight, Harris, Koegel & Caskey— –

Q. They have been your general counsel throughout this thing? A. Yes, sir. (Continuing)—expressed some concern as to whether [1.7] National from a tax point of view was doing business in New York, and we all worked—

Q. Can you place the speaker, sir, who said that? A. I can't place the speaker, I can give you my impression. The moving force in it was an attorney from Mudge, Stern, Williams & Tucker, an attorney by the name of Julian Hagen.

Q. As secretary of the corporation, it was your faithful job to record conversations as they occurred; is that right?

Mr. Pride: I object to that.

The Court: I sustain the objection.

Mr. Kostelanetz: All right, sir.

Q. Would you state, Mr. Edmondson, whether the conversations and the problems concerning the tax status of National Theatres Corporation in New York or California were recorded in these eight volumes of minutes which you have brought to court here, or rather counsel has brought to court? A. No, sir, I don't think they were.

Q. That was something that was off the record; is that right?

The Court: No, I don't think that is fair to say, Mr. Kostelanetz.

We know that in corporate management there are many things that occur, even at a board meeting, which are not included in the minutes, and not for the purpose [168] of hiding something from an official or other interest, but because they are not properly part of the minutes.

If advice is given by an attorney who happens to be present, it may not become the subject of a resolution by anybody who is present at that meeting.

Mr. Kostelanetz: If your Honor please, I don't necessarily draw any nefarious inference from the fact that something is missing. I merely asked whether that was recorded, sir.

The Court: Ordinarily matters of that sort would not be recorded, and I am talking now of corporate organizations. I don't know anything about this company.

If it were the custom of the secretary of the company to take a transcript of everything that was said by everybody who was present and incorporate all of that in the minutes of the board meeting, well and good.

Was that your custom?

The Witness: No, sir, it was not, sir.

* * *

S. P. Skouras—Direct

[200] SPYROS P. SKOURAS, called as a witness, having been first duly sworn, testified as follows:

* * *

[208] Q. He established an office there, did he, when he moved to California?

Mr. Kostelanetz: If your Honor please——

The Court: Mr. Pride, in the first place perhaps you ought to ask the witness where its western office was.

Mr. Pride: Yes.

The Witness: The western office was in Los Angeles, Washington and Vermont.

The Court: Where did your brother have his office?

The Witness: At the offices in Los Angeles, on Washington and Vermont Streets. The main offices of the company.

* * *

[219] Q. Does that refresh your recollection as to whether or not, Mr. Skouras, Wesco guaranteed other notes of a similar nature made by its subsidiaries?

Mr. Kostelanetz: Your Honor, I respectfully object. The papers ought to be here.

Mr. Pride: Your Honor, I have a stack of them this high (indicating). It is just to keep from cluttering up the record that I have done it this way.

The Court: I overrule your objection. I suggest that you permit counsel to look at those papers between sessions of the court.

Mr. Pride: Surely.

[220] The Witness: Your Honor, it would be a long story, your Honor, and if you permit me to

qualify it I would like to say at that time the corporation was losing large sums of money, and we had to borrow money, and we hypothecated all the clear property, as I recall it.

* * *

[225] Q. Mr. Skouras, I show you what has been marked as Plaintiffs' Exhibit 19, being an agreement between the National Theatres Corporation and National Agency Corporation, and I ask you if you were familiar with that agreement? A. Frankly, I don't remember all the agreement contains, Mr. Pride, since it is almost twenty years.

Q. Yes, but do you know such an agreement was entered into? A. Well, it is this agreement.

Q. And do you know whether or not National Agency [226] Corporation performed certain services for National Theatres Corporation under that arrangement? A. Yes, sir.

* * *

[231] Q. And with respect to the contract which you and your brother had with National Theatres Corporation, your services were assigned to the Agency Corporation; is that correct? A. But we held the National Theatres responsible.

Q. Yes, yes, I understand that, Mr. Skouras.

* * *

[232] Q. What was the procedure, if any, which existed with respect to theatre acquisitions or major capital transactions involving the theatres in the various districts where they were located? A. According to my recollection—your Honor will excuse me, I can't remember correctly, but I am

under the impression that where there were traders or landlords or financial people, they had never taken the Agency as the principal. The Agency was acting for the principal, the National Theatres. Now, that is my recollection.

* * *

By Mr. Kostelanetz:

[246] Q. When, sir, did you first get any information that WESCO was doing business in the State of New York? A. Since I was employed.

Q. All the way back to January, 1932; is that right? A. As far as I can say, yes.

Q. Now, you certainly knew, sir, that—on your testimony in chief here—that WESCO or National Theatres did business in the State of New York in 1935, 1936, 1937, 1938, 1941 and so on? A. Yes, sir.

Q. And you knew, sir, that from time to time your corporation would get sued? A. To my sorrow, yes, sir.

Q. And from time to time, when your corporation got sued, it became important to know whether your corporation, [247] National Theatres, did or did not do business in the State of New York?

* * *

A. I was employed in New York. I was doing business in New York all the time.

Q. Yes, sir, and I don't find fault with you, sir, but I am talking about WESCO and National Theatres: Did you know that when litigation time came it became important to know whether WESCO or National Theatres did or did not do business in New York?

* * *

A. I don't know the state exactly, Mr. Kostelanetz. I don't want to be difficult. I don't understand your question. If

you will be kind enough to simplify it—excuse me, your Honor.

Q. Let me help you, sir.

The Court: You don't have to answer any questions that you don't understand.

Q. Let me see if I can help you, sir.

It is correct, sir, in 1941 that the principal [248] business of National Theatres, the principal place of business of National Theatres Corporation was located at 2854 Hudson Boulevard, Jersey City, New Jersey? A. No, sir.

Q. Is it correct, sir, that National Theatres Corporation does not maintain an office in the territorial jurisdiction of the Southern District of New York—you know the Southern District? A. I know.

Q. Up to Albany. A. As far as I was concerned, I never accepted that theory. It was Mr. Hagen's theory, and I couldn't help it.

Mr. Kostelanetz: I respectfully move to strike out "Mr. Hagen's theory," your Honor.

The Court: Strike it out.

By Mr. Kostelanetz:

Q. Is it correct, sir, that "National Theatres engages in no other business other than holding stock in and other securities"; is that correct? A. National Theatres owned many corporations, some, many subsidiaries being wholly owned, and some partially owned, and I was working for the National Theatres which had very substantial assets.

Q. Let me put the question again.

[249] Q. Is it correct that "National Theatres engaged in no other business other than holding stock in and other securities"; is that right? A. That I don't understand, I didn't understand it.

> The Court: Well, what Mr. Kostelanetz is in effect asking you, Mr. Skouras, is whether the entire business of National Theatres was confined to holding stock in other companies.
>
> The Witness: Frankly, your Honor, I can't answer yes or no.
>
> The Court: All right.

By Mr. Kostelanetz:

Q. Let me see if I can help you, sir.

I think you testified about a half hour ago that Agency, sir, that Agency later called Amusement, was just a shell corporation? A. Correct, sir.

Q. Now, would you please tell me if this is correct, and I refer to pages 81 and 82.

> ". . . WESCO, later changed to National. It simply held stocks in other companies. It was more or less a shell of a company."

Now, is that correct? A. WESCO?

Q. Yes, sir, WESCO was a shell. A. No, sir, it couldn't be a shell. It had all the assets. It would be silly if I made a contract with a shell corporation.

[250] Q. Well, let us see, among the assets, Mr. Skouras, and these assets ran into tens, and twenties, and one hundred million dollars or so——

The Court: Of which company?

Mr. Kostelanetz: Of WESCO, later called National.

A. It had very substantial assets of millions of dollars, yes.

* * *

Q. Was it correct, sir, and this is in relation to a definition appearing at Page 81, 82, concerning WESCO, that the function of the company was merely to hold the stocks and collect dividends, when declared, by the various subsidiaries, and then pay out, if such action was deemed necessary by the Board. That is in relation to the definition of shell. A. I can't agree with you, Mr. Kostelanetz, that if a corporation can collect the money, and pay dividends, and owe money, that it is a shell corporation. My understanding is, and maybe it is entirely wrong than yours, but a shell corporation has no assets; cannot pay dividends, cannot collect money; and it doesn't owe money. But WESCO owed money.

Q. WESCO owed money? [251] A. Yes.

Q. Now, is it correct, sir, speaking as of 1941, that at all times since December 29, 1934, the principal office of National Theatres Corporation has been in Jersey City, New Jersey; no meetings of stockholders, directors, or of the auditing committee were held in the Southern District of New York. Is that correct? A. As far as I am concerned the main offices of the corporation was 444 West 56th Street. It is true the accounting department over a period of a year and a half or two years, and the Board of Directors' meetings took place in Jersey, because the Chase Bank's lawyers insisted upon it.

* * *

[259] Q. Well, now, you testified initially, sir, when you took the witness stand that National Theatres was in the business of exhibiting motion pictures through theatres. Did you so testify, sir? A. Correct. That was the main business.

Q. Now, at page 249, Judge Galston, the presiding judge, paraphrased or restated a question of mine, and asked you, Mr. Skouras, whether the entire business of National Theatres was confined to holding stock in other companies.

He asked you that question, sir, and you said that you couldn't answer yes or no. Now, that is correct, that happened yesterday, did it not? A. Yes.

Mr. Pride: What page?

Mr. Kostelanetz: 249.

Q. Now, can you answer whether the entire business of National Theatres was confined to holding stock in other companies? A. Again I am in the same position as to whether National Theatres was the owner, through the ownership of stocks of other companies, or whether they had any direct assets. I am not in the position to answer you yes or no. I don't know whether they are the owners only of the stock of other corporations with no direct assets. That is what you asked [260] me, Mr. Kostelanetz. You asked me if the National Theatres, they had any direct assets in their own name.

Q. Yes. A. Do you mean all the stocks of all of the subsidiary corporations?

Q. National Theatres owns a lot of stocks in other corporations, is that correct? A. Throughout the Midwest and West Coast.

Q. That is where the corporations are located? A. Yes.

* * *

[271] Q. Now, I would like you, Mr. Skouras, for a moment—I will withdraw that.

You testified on your direct examination that from the beginning, at about the time of your election in 1932, right up to 1952, I guess, you traveled a great deal all over the country; is that right? A. Yes, sir.

Q. And as a corporate executive, sir, it is perfectly fitting and proper, as you know, to submit expense accounts to your employers?

Mr. Pride: I object to the form of the question, sir.

Mr. Kostelanetz: It's preliminary.

Q. I would like to know, sir, do you have the expense accounts which you submitted to your employers in court here, that is during those years?

The Court: If there were such.

Mr. Kostelanetz: Yes, if there were such things.

A. Expense accounts of the people that were traveling with me and my own expense account?

Q. Your own expense account. A. Yes?

[272] Q. Do you have those papers in court? A. No, how can I?

* * *

[274] Q. Now, Mr. Skouras, I wish you would turn your attention to California, sir, and let us cover the period when you were either the president or the executive vice-president of National Theatres.

You testified on your direct examination that National Theatres opened an office there in 1932, when your brother

Charles went to California; is that right? A. There was an office there, they had the office there.

Q. Yes, but I mean National Theatres had the office there in 1932, and your brother Charles—— A. It was the WESCO at that time.

Q. The WESCO? A. Correct.

Q. I see.

In other words, WESCO and later National Theatres occupied an office there from 1932 right down to the time of the divorcement; is that right? A. Until the present time.

Q. Right to the present time?

And National Theatres office in California, as you stated on your direct examination, I think you said, was headed by your brother Charles until he passed away a year or so ago; is that right? A. Yes, sir.

[275] Q. Now, still staying with California, Mr. Skouras, when National Agency or National Amusement was created, that company went out to California, too; is that your testimony on direct examination? A. What period?

The Court: What do you mean "went out to California"?

Mr. Kostelanetz: I am sorry.

Q. Had an office in California. A. What period are you talking about?

Q. National Amusement was created or National Agency was created in 1935, and I guess it is still alive, isn't it? A. I am not so sure; at the present time, I have no relation of any kind with the corporation, but at the time when I was associated, or rather even up to the time that Twentieth Century-Fox owned the National Theatres, the

National Amusement Corporation was operating everywhere.

Q. And it was certainly, according to your testimony I believe on direct, operating in California; is that right? A. In the same manner as it was in New York with National Theatres.

Q. Now, you also had, out on the West Coast a company known as Fox West Coast Theatres Corporation; is that right? A. A subsidiary of the National Theatres.

[276] Q. And Fox West Coast Theatres was, as I take it, a 100 per cent owned subsidiary, is that right, or substantially? A. That is my impression, yes, sir.

The Court: Owned by what corporation?

The Witness: The National Theatres Corporation.

* * *

Q. Did it operate some theatres in its own name? A. As far as I am concerned, all the theatres were operated by National Theatres, Mr. Kostelanetz.

[277] I am awfully sorry, you can't divorce me from one point of view of my honest belief that National Theatres was the corporation that was doing business.

* * *

[279] Q. In addition to Fox West Coast Theatres Corporation, you had out on the West Coast an organization known as Fox West Coast Agency Corporation; is that right? A. At the time when the Fox West Coast Agency—you say Fox West Coast Agency?

Q. Yes. A. I don't remember if we did. I was under the impression that it was the National Amusement Corporation—it probably must have been the Fox West Coast Agency Corporation—I am not clear in that, Mr. Kostelanetz, I don't remember it.

Colloquy

The Witness: Mr. Kostelanetz, if you will permit me, if I appear to you difficult, I did not attach any great credence to these agencies, they were an instrumentality of service. Please believe me. And no matter how many questions you put to me, I know what you [280] are trying to get, but I can't help it.

* * *

Mr. Kostelanetz: If your Honor pleases, I have a small item which I would appreciate the discretion of the Court to entertain.

Your Honor, we have an attorney here in court pursuant to a subpoena duces tecum, the senior attorney of the Director of the Corporation Tax Bureau, and he is here with certain papers subpoenaed from the State of New York dealing with the qualifications of National Theatres Corporation to do business in New York, and correspondence, and so on.

Now, I fancy that it probably will not be necessary [281] to call him to the witness stand and be sworn. He has the papers here, your Honor, but apparently they have an office rule or office procedure with regard to the production of those papers being subject to the direction of the Court, and since they are taxpayers, I believe that the production has to be with the consent of the taxpayer, or the defendant in this case.

Mr. Pride: These are the qualification papers of National Theatres in 1949 in New York; is that right?

Mr. Kostelanetz: This deals with correspondence and qualification papers, forms of application.

Now, the exact papers are: "All papers, records, correspondence and affidavits and any and all other

memoranda relating to the qualification of National Theatres Corporation, a Delaware Corporation, formerly known as WESCO Corporation to do business in the State of New York and the payment of the franchise taxes in the State of New York by National Theatres Corporation prior to the year 1950."

The Court: What do you want, to offer those in evidence?

Mr. Kostelanetz: I may, your Honor, if they are relevant.

[282] Unfortunately, your Honor, Prentice-Hall which qualified this company, on examination before trial found that it had destroyed the papers or couldn't find them.

I will probably want to offer them in evidence.

The Court: What direction do you want from me now?

Mr. Kostelanetz: If it is satisfactory to your Honor, a direction that the papers be produced, and, with the consent of the defendant, shown to me, and if relevant I will offer them, of course.

* * *

[284] The Court: These are impounded by this Court and they will be kept in the custody of the Clerk, and I want them returned to—is it the Corporation Counsel?

Mr. John A. Ross: I am the attorney for the State Tax Commissioner.

The Court: The attorney for the State Tax Commissioner, I want him notified as soon as you have determined what you want to do.

Mr. Kostelanetz: Very good, your Honor.

Colloquy

The Court: Can't you read them now into the record, that is what you want, and then let this attorney take them back?

Mr. Kostelanetz: I will do that, your Honor, or proceed with Mr. Skouras, whichever you like.

The Court: Well, I think that you would feel happier to get them back.

Mr. John A. Ross: Yes, sir, I would.

The Court: All right.

Mr. Kostelanetz. Then I will look them over right now.

[285] Mr. Kostelanetz: We had pending a request for certain documents concerning agreements between National Agency and Fox West Coast Corporation, or Fox West Coast Agency Corporation and Fox West Coast Agency.

(Mr. Pride hands papers to Mr. Kostelanetz.)

Mr. Kostelanetz: Thank you very much, Mr. Pride.

I won't take the time to read it now but could I just have it marked for identification in the meantime?

The Court: Yes.

Mr. Kostelanetz: It consists of a letter dated December 2, 1935; another letter of February 25, 1936, and a printed agreement of July 14, 1938; and a photostat dated December 14, 1944.

(Letter dated December 2, 1935; letter dated February 25, 1936; and printed agreement of July 14, 1938, and photostat dated December 14, 1944, referred to were received and marked Plaintiffs' Exhibit 21 for identification.)

* * *

[287] Q. Now, as early, sir, as 1932 what services were rendered in California for National Theatres Corporation—not for any other subsidiary—but for National Theatres Corporation by, let us say, Mr. Bertero in California? A. In 1932 was the Fox West Coast.

Q. Yes. A. At that time Mr. Bertero, he was in—assistant to Mr. Charley Buckley, chief counsel of the Fox West Coast Corporation.

Q. You say he was employed there by WESCO? A. That is my impression, yes.

Q. Was he on the payroll of WESCO? A. That is my impression.

Q. WESCO Theatres? A. Either the service corporation or the WESCO. I can't remember.

Q. When you talk about a service corporation in 1932, which service corporation are you referring to? A. I don't remember whether it was the service corporation at that time or not, and if it was not it would be working [288] directly under one of the corporations of the Fox West Coast.

The only thing I know is Mr. Bertero was associated in the corporation. I don't know for what company he was working, the individual or not.

* * *

[296] The Witness: Off the record, your Honor, I am under the impression that we used to pay a certain amount of money to Fox by the week for the services that they rendered for all those utilities, telephone, electricity, heat, and so on down the line.

Mr. Pride: You are so right, Mr. Skouras, but the information called for here was direct payments made by National.

The Witness: We were paying to Twentieth Century Fox.

* * *

[299] Q. Mr. Skouras, directing your attention to New York, can you enumerate at the time you came into National Theatres in 1932, and let us say up until 1938 or 1939, the offices which you held in corporations which you had at this address at 444 West 56th Street? A. At first it was the WESCO, and National Theatres, and National Theatres Amusement Company.

Q. And how many others? A. I don't remember whether there were many others.

Q. Would there be as many as fifty, sir? A. No, sir, I don't think so. I don't think so.

* * *

[303] Q. Now, at these meetings, sir, which dealt with the preparation of these contracts, is it correct that there would be meetings called together in New York at which you and your assistants were present, and sales managers of various major producing companies, is that correct? A. All at the same time? Or do you mean individually? The meetings we would have only with our staff with one single company, the manager and his assistants.

Q. Then is it correct that you would direct a master sheet to be made up listing what picture was to be bought and what picture was to play at a certain time, and what clearances there would be with regard to a particular theatre; whether it played ahead of a theatre or behind a theatre? Did you direct all that, sir?

* * *

[304] The Witness: Yes.

Q. The answer is yes? A. Yes.

* * *

S. P. Skouras—Cross

[338] Q. Is it true that the defendant Twentieth Century owned all the stock of the defendant National? A. Correct.

Q. And that the defendant National owned all the stock of the defendant National Theatres Amusement Company, Inc.? A. Correct.

Q. Is it true that the corporations are separate entities and are operated as separate entities? A. That is a legal matter that I can't pass an opinion on.

Q. That none of said corporations is an instrumentality of the other, or of any other corporation? A. Again, in my own way, I can't separate one from the other, but it is a legal subject again.

[339] Q. And that none of said corporations engages in the business of the other, or of any other corporation, is that true? A. Well, the fact that Twentieth Century Fox was not engaged in theatres, and the National Theatres was not engaged in making pictures, that is true.

Q. Now about National Theatres not being engaged in the business of National Theatre Amusement Co., Inc., and vice versa? A. That I don't understand. How can that be. It is beyond my understanding.

Mr. Kostelanetz: All right, sir, that is an answer.

Q. Now, sir, and this time I refer to a case entitled Levy against Paramount, Exhibit 10, and I would like to ask you is it true that defendant National was a corporation organized under the laws of the State of Delaware? That is true, is that right? A. Yes.

* * *

[340] Q. Is it true that, certainly, as of 1952 National had its principal place of business in the City of New York, State of New York? That is true, isn't it? A. Yes.

Q. Now, to and including 1952, is it true that National has not had and does not have an office in the State of California, nor has it engaged in or conducted: nor does it conduct or engage in any business in the State of California. Is that true? A. No, sir.

Q. Is it true that National has never been found, or present, or had any agent in the State of California? A. Not according to my understanding.

* * *

JOHN B. BERTERO, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

* * *

By Mr. Pride:

[348] Did this company, Fox West Coast, have any interest in those theatres? A. No, it did not. The stock of that company, the Pacific Northwest Theatres, Incorporated, was owned directly by National Theatres Corporation.

Q. I see.

Would you proceed, please?

> The Witness: Was there a general question, Mr. Pride, what I did between 1933 and 1935?
>
> Mr. Pride: I thought I phrased it that way, that is as to whether you can recall any other matters that you had worked upon.

A. Well, as I say in day-to-day operations I would from time to time bump into a matter involving National Theatres Corporation and would give Mr. Skouras such advice or information as he desired.

Mr. Kostelanetz: Your Honor, I respectfully move to strike out the answer as a conclusion and as vague.

The Court: Anybody that "bumps" and talks about it isn't vague.

Mr. Kostelanetz: It is so hard to cross-examine, [349] your Honor.

The Court: I could cross-examine, I am sure that anybody else could.

I will overrule your objection, if it is an objection.

It is perfectly clear that the witness answered that from day to day there were matters involved which he participated in and which related to the companies, the names of which have been designated by him during the period from 1932 to 1935.

* * *

[355] Q. Do you recall the institution in that year, 1935, in the District Court of the United States, in the Southern District of California, of a certain action entitled H. L. Gumbiner against Fox West Coast Theatres, Charles Skouras, et al, and a number of other corporations, including Fox Film Corporation, various other distributing companies; do you recall the institution? A. I remember the action, yes.

Q. I ask you if you can identify the complaint in that action, Mr. Bertero? A. Yes, this is the action to which I had reference, at least it is the complaint in the action.

Q. Do you recall that case, Mr. Bertero? A. Yes, the general nature of the case.

Q. Were you familiar with the contents of the complaint?

Mr. Kostelanetz: I object to that, your Honor, this is not material.

The Court: Why not?

Mr. Kostelanetz: I don't know how this is possibly material, your Honor. I presume he is going to offer a [356] paper which I can object to, but in the meanwhile——

The Court: He doubtlessly will follow up the action on Gumbiner with some proof that Gumbiner owns or controls stock of Gumbiner Theatrical Enterprises, which is one of the defendants here.

Isn't that the purpose?

Mr. Pride: Why certainly, your Honor.

The Court: I will overrule the objection.

A. I am generally familiar with it, yes.

Q. Were you familiar at the time with H. L. Gumbiner, Mr. Bertero? A. I knew him, yes.

* * *

Q. Well, Mr. Bertero, who was Mr. Gumbiner? A. I met Mr. Gumbiner once or twice prior to the filing of the action. He was the operator of the Los Angeles, the Tower, and I believe one or two other small theatres in downtown Los Angeles, but he was known generally in the exhibition industry in Los Angeles as the operator of the Los Angeles Theatre and the operator of the Tower. I believe [357] he also had a theatre by the name of Cameo, but I am not sure.

Q. Let me digress for a minute.

Are you familiar with the allegations of the complaint in the actions before this Court? A. I have read them, yes.

Q. And you have referred to the Los Angeles and the Tower Theatres.

I ask you if those are the same theatres as are referred to and as are the subject of the complaints or the allegations in the complaints in the actions before the Court? A. They are the identical theatres.

Q. Now, Mr. Bertero, based upon your familiarity with the complaint which I have shown to you in this action which was filed by Mr. Gumbiner in 1935, do you recall in what capacity Mr. Gumbiner was instituting, purporting to institute the action involving these two theatres in that case?

Mr. Kostelanetz: Your Honor, I respectfully object. This has nothing to do with the Statute of Limitations; this is going to the merits, your Honor.

The Court: It has a good deal to do with the Statute of Limitations, but I think you ought to introduce the complaint as an exhibit.

Mr. Pride: Very well, your Honor, thank you. [358] I offer this complaint in evidence.

Mr. Kostelanetz: Your Honor, I object to this. I ask you to look at the complaint.

Neither these plaintiffs nor this defendant is a party to this document that is offered, neither National nor the two corporate plaintiffs.

Mr. Pride: Your Honor, you can see that the parent, the parent of National and the principal subsidiaries were parties.

The Court: I see Fox West Coast Theatres is named as the first defendant.

I will overrule your objection.

I also find Mr. Charles P. Skouras' name and others.

Mr. Kostelanetz: Your Honor, neither of the parties, neither of the three parties in the litigation before your Honor are parties to this paper.

The Court: I will overrule your objection.

(Document received in evidence as Defendant's Exhibit L, as of this date.)

By Mr. Pride:

Q. Now, Mr. Bertero, with the complaint before you, let me ask you if you were familiar with the nature of the action at the time it was instituted?

* * *

[359] A. Well, I became familiar with the complaint, Mr. Pride, at the time it was served upon the subsidiaries of National Theatres Corporation.

Q. And were you familiar with the nature of the claims that were inserted in the complaint at that time? A. Yes.

* * *

[360] Q. Now, Mr. Bertero, I direct your attention to the allegations contained in Section—to page 18, Section 10 of the complaint, in which it is stated that:

> "At all times herein mentioned subsequent to January 30, 1931, and prior to December 8, 1931, the plaintiff operated the Los Angeles Theatre in the City of Los Angeles, California."

Do you recall that allegation, Mr. Bertero? A. I have it before me and I recall that the plaintiff alleged that he was the operator of the theatre in Los Angeles.

Q. And it was in accordance with your information as to his position in the exhibition field at the time——

Mr. Kostelanetz: I object to it as immaterial, your Honor.

The Court: Overruled.

Mr. Kostelanetz: He is talking about Mr. Gumbiner, your Honor?

[361] The Court: Well, I repeat—no, I won't repeat because there is too much repetition in the case already, but I expect the evidence in regard to this action of Gumbiner to be connected with the ownership by Gumbiner of all the stock of one of the plaintiffs in this suit.

Mr. Pride: And also, your Honor, there is another reason for its relevancy here as I will show the part that National Theatres took in this litigation.

The Court: We are speaking of Gumbiner now.

Mr. Pride: Oh, yes; thank you.

The Witness: The answer to your question was yes, Mr. Pride.

* * *

[362] Q. Mr. Bertero, when we adjourned yesterday I was asking you certain questions about an action instituted in California in 1935 entitled H. L. Gumbiner against Fox West Coast Theatres and others, and the complaint in that action has been marked as Defendant's Exhibit L.

Now, directing your attention to the complaint in that action, Mr. Bertero, does the exhibit there indicate when the action was filed? A. The summons was issued on February 2, 1935, according to the copy attached to the complaint.

Q. February 2, 1935? A. Yes.

Q. Now, Mr. Bertero, in point of time, was National [363] Theatres Corporation engaged in any activities in the courts of California at or about that date?

* * *

A. According to my recollection, February 2, 1935, was the very date that the sale was made by the Trustees of the assets of Fox West Coast to National Theatres Corporation, that sale taking place in Los Angeles, and as I recall in attendance at that sale were not only attorneys for National Theatres Corporation, who had come out from the East for the purpose of participating in the transaction, but also several officers of National Theatres Corporation, including, I believe, Mr. Harry Cox. I believe that was his first trip to California, if I recall.

* * *

[364] Q. I direct your attention, Mr. Bertero, to the page following 51; it is unnumbered here. I direct your attention to that page of the exhibit which you have before you which reads as follows:

> "H. L. Gumbiner being duly sworn, deposes and says that he is the plaintiff in the above-entitled action; that he has read the complaint; knows the contents thereof; and that the same is true of his own knowledge except as to matters which are therein stated on information and belief, and as to these matters he believes them to be true." Signed by H. L. Gumbiner and sworn to before Mabel C. Duval, Notary in and for the County of Los Angeles.

[365] In that connection with respect to this verification I now direct your attention to page 18 of this complaint in which appears this allegation:

> "At all times herein mentioned the plaintiff also operated the Tower and the Cameo Theatres in the City of Los Angeles, California."

And I believe that yesterday I directed your attention to the allegation appearing on the same page, that the plaintiff at all times subsequent to January 30, 1931, and prior to December 8, 1931 operated the Los Angeles Theatre in the City of Los Angeles.

Now, Mr. Bertero, with respect to these allegations to which I have called your attention, I ask you if you knew Mr. H. L. Gumbiner? A. I think I met him twice. In early 1931 I met him casually on a matter affecting our company. And again in about 1934, or about that time. I have no recollection of his appearance. But my contact was limited to these two occasions, according to my present memory.

Q. Well, in what capacity did you know him?

* * *

[366] A. Mr. Gumbiner was a well-known exhibitor in the City of Los Angeles.

He had conducted the operation of the Tower Theatre.

I believe he was the first exhibitor in the City of Los Angeles to install sound equipment in the year 1927 or 1928. Everybody in the business knew about his operation of the Los Angeles Theatre and of the Tower Theatre, and one or two other theatres in downtown Los Angeles.

He was very prominent in the newspapers with respect to advertising, using his own name.

Q. You mentioned advertising. Do you mean Mr. Gumbiner advertised in the newspapers—— A. Yes, I verified my recollection to that effect some time ago.

Q. I didn't hear that, Mr. Bertero. A. I said I verified my recollection as to what happened some twenty years ago, that he personally held himself out as the operator of the Los Angeles Theatre.

I sent one of our men down to the Los Angeles Times with respect to some advertising in these earlier years and got [367] one or two pieces of advertising which I delivered to our counsel here.

* * *

Q. Is this one of the advertisements to which you referred, Mr. Bertero? A. Yes. This is the sheet from the Los Angeles Times which was obtained for me by the man whom I instructed——

The Court: Never mind how it was obtained. What is the date?

The Witness: It is the Los Angeles Times of January 31, 1931.

* * *

[370] (Photostat of newspaper page, dated January 31, 1931, referred to, was received and marked Defendant's Exhibit M, as of this date.)

The Court: The other photostat may be offered subject to your objection.

Mr. Pride: The date of the second newspaper sheet is January 30, 1931.

(Photostat of newspaper sheet referred to, dated January 30, 1931, was received and marked Defendant's Exhibit N in evidence, as of this date.)

[371] Q. Now, I show you these two papers, Mr. Bertero, which are marked Defendant's Exhibits M and N in evidence, and I direct your attention to the statement appearing on Exhibit M, "The Los Angeles Theatre, unusual, Broadway between 6th and 7th", and the following state-

ment, "Independently owned and operated by H. L. Gumbiner." Also, to this statement appearing in Exhibit N reading as follows: " 'The Los Angeles' is independently owned and independently operated by H. L. Gumbiner."

Now, I ask you are those the references to which you referred in your testimony as to advertisements? A. Yes, these are the advertisements I obtained.

* * *

[372] Q. I will now show you copies of the two complaints which were filed in the actions now before the Court, and I direct your attention to the last page of each where there is the statement to this effect:

> "That H. L. Gumbiner, being duly sworn, says that he is the president of the Bertha Building Corporation, above-named plaintiff, and is authorized to make this verification on its behalf: He has read the foregoing complaint and knows the contents thereof and the same is true of his own knowledge except as to those matters which are alleged to be on information and belief."

Now, I further direct your attention to the allegation on Page 3, I believe it is, in the document which you have before you, to the effect that the plaintiff corporation—would you please give it to me—that the plaintiff corporation "is a corporation organized and existing under the laws of the State of California and from January 30, 1931, to December 8, 1931, it owned and operated The Los Angeles, Thea- [373] tre in the City of Los Angeles, State of California."

> The Court: Which complaint are you reading from?
>
> Mr. Pride: Your Honor, I was reading this from the Gumbiner Theatrical Enterprises complaint.

By Mr. Pride:

Q. Now, Mr. Bertero, can you state whether this is the same Los Angeles Theatre as to which Mr. Gumbiner independently said he was the operator in the complaint filed by him in 1935? A. I can, it is the same theatre, yes.

Q. And is the individual who verified the complaints in the two actions now before the Court the same individual who verified the complaint in 1935? A. I know of only one H. L. Gumbiner who had any connection with the Los Angeles Theatre.

Mr. Kostelanetz: If your Honor pleases, they are separate parties, obviously separate interests, as I understand it, your Honor.

The Court: Why do you object to a question like that, you know that it calls for the fact.

Do you deny that the Gumbiner in the action is the same one as verified these complaints?

Mr. Kostelanetz: Your Honor, I understand that there was an action previously in 1935 brought by Gum- [374] biner individually, sir, but there was no corporate action back at that time, your Honor.

The Court: Read the question to Mr. Kostelanetz.

(Previous question read.)

The Court: Now, do you have any objection?

Mr. Kostelanetz: No, your Honor.

The Court: You may answer.

A I think I did, but I will answer again. There is only one H. L. Gumbiner whom I ever heard of who operated the Los Angeles Theatre, and so far as I know I have every reason to believe that it is the same man who verified

the complaints in the instant action and also the one in 1935.

Q. Now, after the filing of this complaint in 1935, Mr. Bertero, what participation, if any, did National Theatres have in the defense of that action? A. Upon the purchase of the assets of the trustees at the bankruptcy sale, National Theatres Corporation was required by the trustees to indemnify them against certain contingent liability, including litigation. The trustees were named in the 1935 suit as defendants—am I correct?

Q. Yes. A. So therefore National Theatres was intimately connected with the action in that it had to indemnify the trustees [375] against any liability. Therefore, the filing of the action was brought to the attention of the officials of National Theatres Corporation in New York, and they designated counsel in Los Angeles to represent the main defendants in the action, and indirectly their own interests.

* * *

Q. Do you know who was retained, Mr. Bertero—please strike that.

Do you know who was retained in line with the advice or directions that you said were given by National Theatres Corporation? A. Mr. Alfred Wright of Los Angeles, a lawyer, was retained to put in the appearance of certain of the defendants and to represent those defendants.

Q. And with respect to the participation of National Theatres Corporation in the defense of this action in the respects that you have indicated, have you examined at my request the minute books of the meetings of the directors of National Theatres Corporation in so far as they relate to this procedure? A. Yes, I examined the minutes in relation to this action.

[376] Q. I show you a paper which purports to be an excerpt from the minutes of the meeting of the Board of Directors of National Theatres, and I ask you if that is a resolution which appears in those minutes? A. This appears to be a true copy of the resolution.

Q. And is that the resolution to which you refer? A. It is.

Mr. Pride: I offer it in evidence.

* * *

(Excerpt received in evidence as Defendant's Exhibit [377] A-1, as of this date.)

Q. Now, Mr. Bertero, do you know what disposition was made of this action which was instituted by H. L. Gumbiner in 1935? A. Yes, I do.

Q. And what disposition was made of it, sir? A. A settlement was reached between the plaintiff and the defendants. The plaintiff gave to our attorney, Mr. Wright, as I recall the man to whom the letter was addressed, an acknowledgement that—that is the plaintiffs' attorney gave our attorney an acknowledgement that the action brought was without merit, that was one document; then there was a general release running in favor of all of the defendants named in the complaint, and also a stipulation for dismissal with prejudice of the action which was filed with the local District Court some time in or about late May or June of 1935, and at the same time one of the subsidiaries of National took a lease, I think it was a ten year lease, of the Tower Theatre in Los Angeles for a period running around from July 1935 or thereabouts, and it had a rental of about $45,000 or $50,000 a year. That was one of the documents that were executed at the time that the papers were signed.

Q. Did you participate in any way in the settlement which [378] was effected of this litigation? A. The main negotiations were conducted by Mr. Buckley I have no recollection that I can testify to except I do remember accompanying Mr. Buckley to the office of Mr. Gumbiner's attorney in downtown Los Angeles, and I remember executing some of the papers that were exchanged between the parties to accomplish the settlement and dismissal of the action with prejudice.

Q. Was that occasion when you went to Mr. Gumbiner's, the office of Mr. Gumbiner's attorney, in connection with the closing or consummation of this settlement? A. Yes, it was in connection with the closing.

Q. And that took pla e where? A. In the office of Mr. Jules Goldstone who was the counsel of record for Mr. Gumbiner.

* * *

[379] Q. I show you, Mr. Bertero, a paper which purports to be [380] a copy, a photostatic copy of an instrument filed in the District Court of the United States for th Southern District of California in the matter of H. L. Gumbiner against Fox West Coast Theatres, et al, and I ask you if that refreshes your recollection as to whether such a document was filed?

The Court: Is that the instrument that he referred to ?

The Witness: This is the instrument.

Mr. Pride: That is a copy to which he referred?

The Witness: This is a stipulation of dismissal that I referred to, yes.

* * *

[387] Q. In connection with your association with Mr. Charles Skouras in the years between, let us say, 1935

and 1938, was the association such as to cause you to be informed as to work which he did for National Theatres Corporation? A. Yes, in a general way I became acquainted with many of the problems that he was working on. It was Mr. Skouras' practice to have his close advisers around him at all times, and he liked as many people as possible sharing in the problems and trying to arrive at solutions of them, and so during that period I spent many hours in his office, with other people.

Q. Respecting affairs of National?

Mr. Kostelanetz: I object to that, your Honor.

The Court: Sustained.

I call your attention, Mr. Pride, to the fact that you yesterday afternoon examined Mr. Bertero on his activities for National. I refer you to page 345, and the question is:

"Q. Well now, Mr. Bertero, directing your attention particularly to the period from 1932 through 1938, do you recall what services you performed in California for National Theatres Corporation?"

Now, why do we have to go over that again?

[388] Mr. Pride: I was asking what Mr. Skouras did, your Honor.

The Court: Well, the answer to that question incorporates everything that this witness did.

Mr. Pride: Yes, but I was asking about Mr. Skouras.

The Court: Well, that was part of his function, to cooperate or work with Mr. Skouras.

Mr. Pride: If your Honor pleases, this Mr. Charles Skouras is dead, and I want to bring out through this witness the acts of Mr. Skouras, as one of the general managers——

The Court: If your answer yesterday afternoon, Mr. Bertero, if that answer wasn't comprehensive enough, you may add to it.

The Witness: Well, your Honor, my recollection of my testimony yesterday is to the effect that I was acting under Mr. Skouras and doing those things I did at his direction, so to that extent I narrated the activities of Mr. Skouras, as far as I recall them, during those years as they pertained to matters other than Fox West Coast Corporation.

* * *

[406] Mr. Pride: That is all.

While I was examining Mr. Bertero, your Honor, there was one paper which your Honor said could be marked as an exhibit, and I apparently neglected to have it marked before I used it. I want your record to be complete, and so I would like to have it marked at this time.

If you recall, your Honor, it is a copy of the stipulation of dismissal entered on the order of the Court in this Gumbiner case in 1935.

The Court: I have marked it as Exhibit O previously.

Mr. Pride: Then that is fine. I wanted your record to be accurate.

[407] (Stipulation of dismissal in re Gumbiner case referred to, was received and marked in evidence as Defendant's Exhibit O, as of this date.)

* * *

Cross Examination by Mr. Spanos:

[425] Q. When in point of time in relation to the date September 26, 1932, was it, Mr. Bertero, that you took this

trip with Mr. Skouras about which you testified on your direct examination? [426] A. What trip?

Q. Through Montana and some of the northwestern states where you now recall that he made a statement to you about the plans of National Theatres. A. You didn't hear my testimony. I did not take a trip with Mr. Skouras to Montana.

I was asked by Mr. Skouras to go to Montana.

Q. I see. A. And that was in or about 1937, possibly 1938; I can't place the year.

Q. Now, when in point of time was this date, September 26, 1932, in relation to the commencement of your association with Mr. Skouras? A. I met Mr. Skouras when he came to Los Angeles in March of 1932; I left for New York with Mr. Buckley in late May of 1932, and returned in the middle or latter part of July of that year, but I had contact with Mr. Skouras from the time and during the period I was in Los Angeles.

Q. That is Mr. Charles P. Skouras? A. Yes, Mr. Charles P. Skouras.

Q. And did you also have contact with Mr. Spyros Skouras in California during that period? A. I remember, I believe he came to the Coast with Mr. Charles Skouras at the time Mr. Charles Skouras became co-manager of [427] the properties, and then I don't recall meeting him again until I met him in New York with Mr. Buckley at the time we negotiated the large loan with Chase National; I don't recall meeting him after I left New York until September of 1932.

* * *

[441] Q. Mr. Bertero, in answer to certain interrogatories propounded by the plaintiffs in this case the defendant has listed certain cases in which it was named as a defendant

in California, in either the State or Federal Courts, and as to some of these cases it appears from the answer to the interrogatories that the defendant was not served.

I want to call those particular cases to your attention and ask you a question in connection therewith. A. These are cases, Mr. Spanos, in which National Theatres Corporation was not served with process?

Q. Right.

* * *

[442] Now, do you recall, Mr. Bertero, whether as to any of these cases any attempt was made to serve National? A. Well, I would not know the inactivity or activity of the plaintiffs or their attorneys in any action where National—where the marshal had instructions to serve, there was always available in California Mr. Charles P. Skouras, president of [443] National Theatres, and Mr. Harry C. Cox, the vice-president of National; and National was served in a number of actions and it was just a matter of the plaintiffs getting out the process and serving the process.

Q. And did you personally take any part in any case, in seeing to it that National was served? A. I made it convenient time and again for the United States Marshal to serve either Mr. Skouras or Mr. Cox. I must have taken the Marshal into Mr. Skouras' office on possibly four or five occasions; but normally, in order not to disturb Mr. Skouras, I would see that he served Mr. Cox.

In one or two instances I think I may have accepted service.

Q. You, yourself, accepted service? A. After finding out that it was agreeable to accept it.

Q. That was the practice you followed for National in California whenever service was attempted upon it? A. Yes. Well, to take it to Mr. Skouras if he was present and

Mr. Cox was not present; to take it to Mr. Cox if possible, if he were present, so as to avoid inconvenience to Mr. Skouras.

I think Mr. Alan May, the assistant treasurer of National Theatres Corporation, may have been served in one action. He was always available.

[444] And then possibly in one or two cases I accepted service for reasons which I do not recall. Perhaps both Mr. Skouras and Mr. Cox were going to be out of town and I checked with one or the other, on the call from the Marshal, that it was agreeable to accept service for them.

Q. In other words, the practice followed was if Mr. Skouras or Mr. Cox were present you would take the Marshal in to them; if they were not available you, yourself, would accept service for National? A. You can't call it a practice. I am trying to tell you the fact. Whether it is a practice or not would depend on your interpretation.

The Marshal always called me in advance, Mr. Spanos, to find out whether or not I would be present and help him in the performance of his duties.

Q. Do you recall the case of Berman versus Twentieth Century Fox Film Corporation? A. I do.

Q. Do you recall how service was attempted on the National in that case? A. I don't recall particularly what was done.

* * *

[445] Q. For the purpose of refreshing your recollection, Mr. Bertero, I show you—— A. You didn't let me finish my answer.

Q. I am sorry. A. In my deposition you, I think, made it a point Mr. Brooks was the Marshal who served the peti-

tion upon me as an officer of Fox West Coast Theatres Corporation and as also an officer of several subsidiary corporations which were made defendants in the action.

I know Mr. Brooks served me in two or three cases and then there is another Marshal I became familiar with who always served Fox West Coast and the subsidiary companies by coming to me with the papers.

* * *

[448] Q. In other words, Mr. Bertero, in the Berman case you didn't follow the practice you have previously described of facilitating service upon National whenever it was attempted? A. I am puzzled by the fact that Brooks said he was unable to find National Theatres Amusement Company, Incorporated, within his district, it having a very prominent sign on the building, a telephone listing, Mr. Harry Cox was present. Mr. Cox might have been in New York in May of 1947, but I don't think that both he and Mr. May were simultaneously out of town. I don't know the whereabouts of Mr. Skouras in May of 1947, but National Amusement was certainly within the district and prominently doing business.

Now, it could very well be that neither Mr. May nor Mr. Charles P. Skouras and Mr. Cox were in town, and he was informed, but I don't have any recollection of the matter.

Q. You say it puzzles you, Mr. Bertero, that the Marshal couldn't find National Theatres Amusement Company? A. It certainly was within the district.

Q. You are not surprised that they couldn't find the National Theatres Company? A. I am not surprised? He could have found Mr. Skouras, [449] if Mr. Skouras within the district, he could have found Mr. Skouras or Mr. Cox

or Mr. May, all of whom were officers of National Theatres Corporation.

* * *

[450] Q. Now, Mr. Bertero, did National conceal its presence in California during the period 1930 to 1952? A. In what way conceal, Mr. Spanos?

Q. Did it attempt to keep information as to its presence in California from becoming public? A. I think Mr. Charles Skouras was written up frequently in national magazines, and so forth, as the co-manager of National and its properties; that is my recollection. I don't know of any efforts. Everybody knew that he was a [451] very prominent person in the affairs of National Theatres Corporation, and I think that was known throughout the breadth of the land.

Q. Mr. Bertero, will you answer my question, yes or no?

Mr. Pride: I submit he has answered.

The Court: I think he has.

Q. Mr. Bertero, have you ever heard Mr. Skouras deny under oath that he was in California for National Theatres, Mr. Charles P. Skouras? A. I have no recollection of that matter.

Q. It is Mr. Charles Skouras you were talking about in your previous answer; isn't it? A. Yes, I so said.

Q. Hasn't he in your presence in a procedure in which you were attorney of record denied that he was in California as an employee of National Theatres? A. I have no recollection of the matter.

Q. Do you remember the case of Sturdivant versus National? A. Yes, I do.

Q. Were you active in that case? A. In the sense that I helped to prepare various facts in the case; we were independently represented by counsel.

Q. And weren't you one of the counsel of record in that case? A. I have no recollection that I was. I think the firm of O'Melveny & Myers were.

Q. For purposes of refreshing your recollection, [452] Mr. Bertero, I hand you a transcript of the deposition taken in that case. A. What does this refresh my recollection to?

Q. Does it reveal that you were the attorney of record in that case? A. It says this: "For certain defendants, O'Melveny & Myers, by Homer I. Mitchell, Esq., and W. B. Carman, Jr., Esq.," both of whom are members of the firm, and John B. Bertero, Esq.

I don't recall that I was counsel in that case at all.

Q. Do you recall whether you participated at all in this deposition by way of making objections? A. Well, I'm fairly positive if I were present at the deposition I did not make objections.

Q. Well, do you remember now that you see this document before you that you were present at the deposition? A. I attended Mr. Skouras' deposition, yes.

* * *

A. I have a faint recollection to that effect.

Q. Now, do you have any recollection at all of Mr. Skouras testifying under oath in this deposition in your presence that he was not in California on the business of National Theatres? A. I have no recollection of any [453] testimony in that case.

Q. Now, do you recall, Mr. Bertero, that in that same proceeding the deposition of Mr. H. C. Cox was taken? A. I remember that Mr. Cox's deposition was taken.

Q. And do you recall in the testimony of Mr. Cox—— A. I know nothing about his testimony, I don't remember ever reading it, and I am sure that I was not present when it was taken.

Q. Do you recall that it was testified in that case that the position of Charles P. Skouras, who was one of the defendants in that case, was that the defendant in this case, National, did not do any business in California? A. I recall at the time of my deposition you showed me papers which indicated attempted service was made upon Mr. Laurence Peters, the plaintiff wanting to take his deposition as an adverse witness, and the plaintiff made the contention that in as much as Mr. Peters was an officer of a subsidiary company, that they could take his deposition as an officer of National and as an adverse witness, and a stipulation of some character was shown to me by you which was put into that record for the purpose of getting a decision of the Court on the question whether or not service upon Mr. Peters, who was not an officer of National Theatres Corporation, was service, good service, and that his deposition could be taken as an adverse witness.

[454] Q. On your direct testimony, Mr. Bertero, you testified that the question of whether or not National Theatres transacted business in California or was doing business in California had never been litigated; do you recall whether or not—— A. Did I say that just that way, Mr. Spanos?

Q. I think that was the substance and effect of what you said. I don't have the transcript here, but I think that is what you said. A. I think I said I can't recall a case where the issue was ever litigated in California.

Q. Now, was that issue litigated in the Sturdivant case? A. No, I think the only issue that I remember was—based upon the papers you showed me, was whether or not Mr. Peters could be served with process as an officer of a subsidiary company, and that be effective service upon National Theatres Corporation, and the Judge ruled adversely. I say that based upon what I saw.

* * *

[458] Q. Now, Mr. Bertero, at the time that you had your conversation with Mr. Johnston some time, I think you fixed the date about 1947—— A. I did, and it may have been 1948, somewhere around that period.

[459] Q. Can you tell us whether or not either you or Mr. Johnston considered tax problems in deciding whether or not National Theatres should avail itself of the defense of venue and jurisdiction? A. I have no independent recollection of the conversation with Mr. Johnston. I am inclined to think that it would have been in the forefront of my mind, if it were on state franchise taxes.

Q. Do you have any recollection of any conversation with Mr. Johnston about this subject matter during the period subsequent to 1947, where either you or Mr. Johnston considered the tax problem, either the first conversation you had with him or a subsequent conversation you had with him? A. Whether we considered the tax problem?

Q. Yes, in connection with this matter of what National should do, what position it should take about whether it was doing business in California? A. No, I have no independent recollection of it.

Q. And you didn't so testify in your deposition, did you? A. I don't know what I testified to.

Q. Were you in court yesterday when Mr. Caskey testified? A. Yes, I was.

Q. And you heard his testimony? A. Yes.

Q. Now, did his testimony refresh your recollection so as to permit you to mention in your direct examination that [460] tax considerations were paramount in causing you to include this defense and then waive it? A. No.

* * *

[470] Q. Did there come a time, Mr. Bertero, when you had a subsequent discussion with Mr. Johnston; isn't that correct? A. That is right, I remember a conference with Mr. Johnston.

Q. And can you fix the time of this second conference? A. No. I remember the second one, but I can only fix it in this respect: It became important to Mr. Johnston to know the wishes of his client, that is as to whether or not they wanted to litigate the issue whether or not National was transacting business in the State of California, and at that conference it was decided not to litigate the issue, and that is the only reason I remember the conference.

Q. Can you fix the date of the conference in relation to the decision in the Sturdivant case? A. I tried to, I am not sure that I can. It seems to me that it was two or three years which had elapsed after the first conference—well, the conference relates to a case on trial in which National, as a result of the conference, appeared and defended.

Now, I can't place that case. If you can tell me that case and the date of trial, I will tell you somewhat the period when the conference took place.

[471] Q. You say the only way you can fix the date of this second conference is in relation to a case in California

in which National appeared and defended on this issue? A. Not defended on the issue, where we had decided not to.

The Court: He said that that issue was never litigated.

Can't we have that as the testimony of this witness?

Q. Now, Mr. Bertero——

The Court: I am asking you a question.

Mr. Spanos: Yes, sir, that is his testimony.

* * *

[487] Q. During the period 1930 to 1942, Mr. Bertero, do you know whether or not the defendant in this case had any departments officed in California: Film buying department, advertising department, legal department, any departments of that type. A. From 1930 to——

Q. 1942. A. Well, you have shown in evidence here —Oh, the defendant, National Theatres, ignoring——

Q. Yes. A. —ignoring National Theatres Amusement Company.

Q. Yes. A. Mr. Skouras was co-manager of all the National interests here, and so he performed his functions as co-manager. And Mr. Sullivan performed, under his contract—that one you showed me—after 1935 although he continued residence in Los Angeles. There were several individuals who came out from New York, but I don't know what payroll they were on.

* * *

[489] Q. Now, during all this period, 1932 to 1942, you were working in close association with Mr. Skouras?

The Court: Yes. He has said that a half dozen times.

* * *

[496] Q. Mr. Bertero, did you take any steps since the date of your deposition on September 28th and 29, 1955, to refresh your recollection as to the matters involved in your deposition, any of the matters? A. No. I read the deposition on the plane coming east, and I have discussed some phases of this case with my counsel since I have arrived here.

Q. Have you, for the purpose of refreshing your recollection, had any discussions with anyone other than your counsel? A. No.

Q. Have you examined any documents other than documents that have been shown to you in the court room here? A. I saw some documents in connection with the case of Jensen and Von Herberg, the 1932 action. I saw a copy of a dismissal of that action.

Q. You saw a copy of a dismissal of that action? A. A copy of a dismissal of that action by the plaintiff in California.

Q. Now, Mr. Bertero, I want to direct your attention to a conversation with Mr. Cox that you testified to on page 405 of your testimony in this case as part of your direct [497] examination, and for the purposes of calling that conversation to your mind I just read from your testimony.

> "I do recall a conversation, not in detail, with Mr. Cox, about the allegation to the effect that we were transacting business in the State of California, and the adoption of the position that we didn't want to have on the public record any admission that we were transacting business in the State because of the possible use by the State Franchise Tax authorities as an admission that we were transacting business."

Can you fix the time, Mr. Bertero, of that conversation, approximately? A. No. I had a number of conversations with the treasurer of National Theatres about that subject.

Q. Do you recall who else was present at any of those conversations? A. No.

Q. Now, can you fix the time of those conversations in relation to the case of Jensen versus Von Herberg or Jensen and Von Herberg against WESCO? A. I am positive I had no conversations with Mr. Cox then because that case was filed in Los Angeles in 1932, according to the information you gave me at my deposition, and I don't think I met Mr. Cox until 1935.

Q. Can you fix the conversations you had with Mr. Cox [498] about this subject in relation to the first meeting that you had with Mr. Frank Johnston, which was fixed in approximately 1947? A. No. I had conversations with Mr. Cox in the course of his and my affairs and the problems of National from time to time and among those discussions would be matters relating to taxes and other routine matters of the corporation.

Q. Now, do you recall whether Mr. Frank Johnston was present at any of the conversations you had with Mr. Cox? A. I am sure he wasn't.

Q. You are sure he was not? A. I don't recall any such conversation where Mr. Cox and Mr. Johnston were present.

Q. Mr. Bertero, was the matter of liability for state taxes that came up in your conversation with Mr. Cox one of the factors that you considered in the first discussion that you had with Mr. Frank Johnston in 1947 relative to whether or not National should plead as a defense that it was not doing business in California and had no officer

or agent there? A. Mr. Spanos, I stated numerous times yesterday I have no recollection of that conference of some years ago. I can't tell you what was said. I don't recall it.

Q. The question that was asked of you on direct and to which you gave this answer, Mr. Bertero, on page 405 was as [499] follows:

> "Q. My question, Mr. Bertero, was directed to the specific eleven cases which represent excerpts from plaintiffs' exhibits in this case and they are all in this period of 1948 to 1951. The case which you mentioned, the Fanchon & Marco case, is not in these cases and, therefore, I am directing your attention solely to these eleven cases and I am asking you if you know what were the circumstances which led to the interposition of the defense that was pleaded in each case?"

Now, as a circumstance leading to the interposition of the defense, you gave the answer about the conversation with Mr. Cox.

Was that a circumstance that you mentioned to Mr. Frank Johnston? A. I don't recall. Mr. Spanos, in every one of these eleven cases, our parent company, Twentieth Century-Fox Film Corporation, was named a defendant and appeared and in every one of these cases Twentieth Century-Fox was named a defendant in practically all of them, with maybe one or two exceptions, and that very large corporation was served, appeared and defended.

The appearance of National had no—whether it appeared or not had no consequence as far as the financial condition of the corporation was concerned. The parent was sued and one [500] of its principal subsidiaries was sued.

Obviously the state tax problem, the franchise tax problem, must have been paramount in mind but I can't

relate any conversation with anyone regarding the problem, it has been so many years ago.

Q. Mr. Bertero, was your discussion with Mr. Cox in connection with filing these answers in these cases? A. I have had many discussions with Mr. Cox about the—about National Theatres Corporation and I don't know whether I had any discussion with him about the filing of the answer in these cases. I can't remember. I may have had. I don't know.

Q. I want to call to your attention the testimony given by you at page 211 of your deposition.

> "Q. Now, do you recall whether or not you have, from the date of the two discussions with Mr. Johnston down to this date, discussed this matter," namely, of these answers, "with anyone other than Mr. Johnston?" "A. I have no recollection of discussing it with anyone else."

Now, are you telling the Court today that you have a recollection you discussed this matter with Mr. Cox?

> Mr. Pride: I submit you should identify what the matter is, Mr. Spanos.
>
> [501] Mr. Spanos: The matter of the two discussions.
>
> Mr. Pride: I think you were questioning him about the answers in these cases.
>
> Mr Spanos: Pardon me?
>
> Mr. Pride: I think you were questioning him solely about the answers in these cases.
>
> Mr. Spanos: That is right, and I want to know now whether or not he recollects discussing the answers in these cases with Mr. Cox.
>
> The Witness: I have no recollection specifically of any discussion with Mr. Cox. I had numerous

discussions on many problems, including state franchise taxes, with Mr. Cox.

* * *

[502] Q. Mr. Bertero, were you present at the trial of the James case? A. I testified at, oh, probably four or five [503] days in that case, yes.

Q. Have you examined the pleadings filed in the James case? A. I am sure I read the complaint and I may have read the answer, but I have no recollection. It would be my practice to read the complaint.

Q. Now, on your direct examination you testified, at page 400, "National Theatres Corporation, through its counsel, did not urge the defense but waived it and went to trial."

Did you hear any counsel for National Theatres Corporation, in the course of the proceedings in the James case, waive this defense? A. I can be wrong there. It is my understanding at the moment that National Theatres Corporation was a defendant in that action and that it was represented in court by counsel who also represented Fox West Coast Theatres Corporation, and Principal Theatres, Inc., one of the subsidiaries of National Theatres Corporation, but if National Theatres Corporation was not a defendant in that action, then there was no judgment against National Theatres Corporation. But I have assumed all along that National Theatres Corporation was a defendant.

Q. I think the record in the case indicates National Theatres Corporation was a defendant. Now, will you testify today whether or not you heard any counsel for National [504] Theatres Corporation waive this defense during the proceedings in the James case? A. I was only present in the court room as a witness on the stand, and nothing of that kind transpired while I was a witness on the stand.

Q. Did you see any pleadings whereby the defense was waived in writing? A. No.

Q. So—— A. That is, I don't recall having seen any, but I heard Judge Westover refer to counsel for National Theatres Corporation at the table, and I heard that counsel making objections in conducting the defense.

Q. It is on the basis of that that you now testify National Theatres Corporation, through its counsel, waived the defense? A. All I state is that, and you have refreshed my recollection as being accurate, that National Theatres Corporation was a served defendant in the action and defended on the merits.

* * *

[516] Q. I want to call your attention to your testimony on Page 230 of your deposition when you were being questioned by Mr. Pride.

Well, in order to make it clear, I have to begin with a question on Page 229.

> "Q. Now, in arriving at your decision in that respect, what was the determination or the basis for the determination which you reached as to waiving, abandoning, or not pressing that defense?"

Then there are some objections, and Mr. Pride explains it on Page 230:

> "I am asking him if there was a reason that they determined upon which caused them to take the action which they did."

Then there are some more objections.

Then, the witness:

> "A. The decision was made that we could not prevail upon that defense if it were raised and litigated."

John B. Bertero—Redirect

Now, does that refresh your recollection, Mr. Bertero, as to the basis on which Mr. Johnston and you ar- [517] rive at the second decision to abandon this defense? A. I feel confident that that was ample reason not to litigate the issue, and also from the financial point of view it was of no consequence.

* * *

[533] *Redirect Examination by Mr. Pride*:

Q. Mr. Bertero, in this exhibit here of the plaintiffs which relates to the Jensen and Von Herberg suit, Exhibit No. 3, you testified to the fact that that suit was voluntarily dismissed by the plaintiff.

I ask you if you find the order of dismissal in that?

The Court: Is it there?

Mr. Pride: It isn't, your Honor, it is not there, and I wish to complete the filing.

By Mr. Pride:

Q. I show you this paper, Mr. Bertero, and ask you if you recognize it and if it were filed in that action? A. Yes, it is a copy of a dismissal filed with the Clerk of [534] the Superior Court of the State of California, County of Los Angeles, and it appears to have been filed on November 9, 1932. The handwriting thereon is mine.

Q. And who has signed it? A. The dismissal is signed by the attorney for plaintiffs, which is the practice in that County.

Q. Thank you.

Mr. Pride: I offer it in evidence.

* * *

John B. Bertero—Recross

Q. Mr. Bertero, there have been introduced in evidence in this case, as one exhibit, the minute books of WESCO, of National Theatres, up to 1942.

I show you these minute books from 1942 to 1949, and ask you if you are able to identify them as the official corporate minutes of National Theatres? A. They were among the records of National Theatres Corporation in Los Angeles, and at your request I sent them East, and those are the books that I sent you.

Mr. Pride: I offer them in evidence as a continuation of Exhibit A.

(Books received in evidence as Defendent's Exhibit A-2, as of this date.)

[535] The Court: They will be received, Mr. Kostelanetz, under the same restriction as apply to Exhibit A.

Mr. Kostelanetz: Very good.

Your Honor, just for purposes of clarification.

Recross Examination by Mr. Kostelanetz:

Q. Mr. Bertero, they are New York books, which, as I understand, went to Los Angeles in connection with some litigation there. You didn't mean to imply that you kept them in Los Angeles from 1942 on? A. The office of National Theatres was removed in September, 1952 to Los Angeles, and all the records of that corporation are now in Los Angeles.

Q. But they were originally New York records? A. They were kept in New York until about September of 1952.

Q. This paper is labeled "Dismissal in the Superior Court of the State of California."

Now, I would just like to ask one or two questions about that.

Mr. Bertero, this proposed offer of dismissal reads:

"Filed November 9, 1932," and the initials "J. B. B.," those are your initials?

A. I stated that is my handwriting on there, Mr. Kostelanetz.

[536] Q. This is your copy, is that your office copy? A. That is right, yes, but I think it also has the handwriting of the attorney for the plaintiff, it being a practice to secure dismissals in duplicate and filing the original, but this would be my office copy.

Mr. Pride: I will offer that in evidence.

(Dismissal received in evidence as Defendant's Exhibit Q, as of this date.)

* * *

[538] The Court: Yes, sir.

Mr. Pride: Your Honor, we have decided we are not going to call any more witnesses in this case. I do have a few matters of a formal nature in connection with a few exhibits that I would like to have marked.

At the time when Mr. Bertero was testifying concerning the action instituted by Mr. Gumbiner——

The Court: Yes.

Mr. Pride: —back in 1935——

The Court: Yes.

Mr. Pride: —your Honor indicated you anticipated there would be some evidence as to Mr. Gumbiner's interest in the two corporations which are the plaintiffs here.

The Court: Yes.

Mr. Pride: And I, therefore, now offer in evidence certain interrogatories propounded to the plaintiff, Gumbiner Theatrical Enterprises, and filed in this court in one of these actions on August 17, 1953 and also the answer of Gumbiner Theatrical Enterprises to those interrogatories, which is also filed in the record here—was filed on January 27, 1954—which [539] answers to interrogatories establish that Mr. Gumbiner——

The Court: You are not offering what you——

Mr. Pride: I was just adverting to their relevancy, your Honor, that's all. If that be unnecessary, why, I will ask to have these marked at this time. I offer them in evidence and ask to have them marked at this time.

The Court: The originals are here?

Mr. Pride: They are in this file, your Honor. We have marked our office copy.

The Court: If you want to mark the office copy, that will serve my purpose.

Mr. Pride: Yes, that is what I thought.

Mr. Kostelanetz: Could I see them before its receipt? Could I look at them?

The Court: Yes.

Mr. Pride: They emanated from your office, Mr. Kostelanetz.

And I also——

The Court: This is Exhibit R. Give Mr. Kostelanetz a chance to examine the exhibit.

Mr. Pride: Yes, your Honor.

Mr. Kostelanetz: If your Honor please, our objection is not to the competence of the paper, of course, but exclusively to the materiality and the

[540] relevancy in relation to the Statute of Limitations in issue which we are trying here.

The Court: You had better let me see the papers.

I admitted the record in the Gumbiner complaint against a number of defendants.

Mr. Kostelanetz: Yes, that was subject to correction, if your Honor recalls.

The Court: Yes, I will admit this answer to the interrogatories.

Mr. Pride: Which I might say, your Honor, shows the shareholdings——

The Court: That isn't necessary.

Mr. Pride: Yes, I understand.

The Court: That is R.

(Interrogatories and answers to interrogatories, Gumbiner Theatrical Enterprises, Inc., was marked Defendant's Exhibit R and received in evidence, as of this date.)

Mr. Pride: And with respect to the second case here, the Bertha Building Company case, I make the same offer with respect to interrogatories propounded in that case and the answers thereto. I offer them.

The Court: That is a separate interrogatory?

Mr. Kostelanetz: The other plaintiff.

May I look at that, your Honor?

[541] I presume, your Honor, my objection and your Honor's ruling would be the same with regard to this paper?

The Court: Yes.

Mr. Kostelanetz: However, I do want to call your Honor's attention that at the time that the causes of action arose or about that time, the stockholder was the Bank of America National Trust & Savings Association.

The Court: I will take it. I take note of that.

Mr. Pride: But may I also, so that the dates will be clear, direct attention to the fact that on the date when this action was settled as testified by Mr. Bertero and a stipulation of discontinuance and order of dismissal with prejudice was entered by the Court in that 1935 action, these answers show Mr. Gumbiner owned all the stock of both corporations.

The Court: That is the only point I am interested in.

(Interrogatories and answers to interrogatories, Bertha Building Company, were marked Defendant's Exhibit S and received in evidence, as of this date.)

* * *

[549] The Court: Then you rest. Does the defendant rest?

Mr. Pride: Defendant rests, your Honor.

I would like to make one last request here. In connection with the papers that have been given to your Honor—and I fear perhaps too many have been given by us at least—there is a brief that we submitted in the first instance concerning our contentions, that you ruled you would not hear, with respect to the judgment on the pleadings and I simply would request, your Honor, that that might be considered a brief in support of our position after the evidence in so far as it is applicable to the issues you have tried.

The Court: All right.

* * *

Mr. Kostelanetz: If your Honor please, pursuant to the subpoena duces tecum served on National

Theatres Corporation, I respectfully request items listed in that [550] subpoena under 2, 3, 4, 6, and 19 which deal with the State of New York.

Your Honor has already ruled yesterday afternoon and this morning with regard to papers and documents on the question of doing business in California.

Now, may I say my request is for like papers with regard to the State of New York.

Mr. Pride: As far as New York is concerned, Mr. Kostelanetz, that was the man you had here with the file which you looked over, having all the papers relating to qualification in New York and as to which you said you wanted one letter which was read into the record.

We have nothing further.

Mr. Kostelanetz: That was a man from the State Tax Department, your Honor.

Mr. Pride: That is right.

Mr. Kostelanetz: And not from National Theatres. Am I to understand counsel's statement that the corporation has no papers under Items 2, 3, 4, 6, and 19 with regard to the State of New York?

Mr. Pride: 19. I assume that what has been said as to the contents of that file as containing everything that the company might have on the matter of course does not apply to Item 19 which calls for any writings [551] containing legal opinions relating to the doing or transacting of business in the State of New York. I submit, your Honor, that legal opinions addressed to the corporation would not be—should not be produced.

The Court: They would not be admitted here.

Mr. Pride: That is right.

Mr. Kostelanetz: Now, as I understand it, then, the answer is with regard to Items 2, 3, 4, and 6 that the corporation simply does not have these papers and, therefore, cannot produce them. Is that right?

Mr. Young: As far as cancelled checks are concerned you asked for that and we told you we didn't have any.

As far as papers submitted to the State of New York, you had Mr. Ross here, and you examined it and then we were allowed to examine it and there is not a single scrap of paper that was not in that file and about ten times as many more than we were able to come up with. They were all in that file. I can give him duplicates of those letters. That's all.

Mr. Pride: Has Mr. Kostelanetz seen in that file the papers that we have in our file?

Mr. Young: He hasn't asked for those.

Mr. Pride: Are there copies of papers Mr. Kostelanetz has seen in the files which we have?

[552] Mr. Young: Very few. A half dozen. Six or ten, maybe.

Mr. Kostelanetz: If your Honor please, I respectfully submit to the Court I have no understanding of just what it is—what position counsel takes. If they have these papers I respectfully ask to have them produced.

The Court: Have you those papers?

Mr. Young: We have some, yes, your Honor.

The Court: Give them to Mr. Kostelanetz.

Besides that, what else have you, Mr. Kostelanetz, by way of rebuttal, while they are looking for such papers as they have?

Do you have them?

Mr. Pride: Sir?

The Court: Do you have them?

Mr. Pride: Yes. (Counsel hands documents to Mr. Kostelanetz.)

Mr. Kostelanetz: Possibly I can help counsel a little bit.

Mr. Pride: Yes.

Mr. Kostelanetz: In answer to interrogatories, certain letters are listed under answer 205-C.

Mr. Pride: Unless they were in the file that was produced here yesterday. We understood, Mr. Kostelanetz, [553] that when you saw that file and we let the man go with it and you took out this one letter, that that was the best source of this business of what was filed with the State of New York. And I understand that letter, which you read in the record, you did offer in evidence. Is that correct?

Mr. Kostelanetz: If your Honor please, what was produced by the State of New York has nothing to do with this subpoena.

The Court: Can you give him any papers that you have?

Mr. Pride: Yes. I have given some.

The Court: Look for any and all.

Mr. Pride: There they are (indicating).

(Recess had)

Mr. Kostelanetz: If your Honor pleases, I would like to have marked as one exhibit for identification, and not in evidence, all the papers that were produced in response to my request with relation to Items 2, 3, 4, and 6 of the subpoena duces tecum.

I would like to offer in evidence a letter of December 14, 1949, from—I presume W. F.——

Colloquy

Mr. Pride: Mr. Fisher is W. F., his name is William Fisher, and he is an associate in our office.

Mr. Kostelanetz: It is addressed to Alfred G. [554] Muller of Prentice-Hall Corporation, and is dated December 14, 1949, and it encloses statement and designation for qualification of National Theatres Corporation, and it encloses the $100 filing fee and tax form 241-CT.

Now, I specifically ask, your Honor, for the production of the retained copy of tax form 241-CT. I have a blank copy of 241-CT.

Now, the reason why I ask for the production of the retained copy is that this copy has, or rather the form provides for a statement and oath "as to whether the corporation had an officer or agent or representative in New York"—and so on—"prior to the date of the making of application for permission to do business in the State of New York."

The Court: Have you such?

Mr. Pride: No, your Honor.

Prentice-Hall has, as you know——

The Court: I just want to know whether you have got it.

Mr. Pride: No, no.

The Court: Where would the original be?

Mr. Pride: The only place I could know of would be, well, the original would be filed with the State Tax people, your Honor, and must have been in its folder.

[555] The Court: Do you state in answer to the subpoena duces tecum that you are unable to produce that paper; is that right?

Mr. Pride: That is right.

Colloquy

The Court: Then I can't do anything about it.

Mr. Pride: I submit it appears on its face that it is in the file, in the Tax Department file.

Mr. Kostelanetz: If your Honor pleases, the paper was not in the Tax Department file.

I would like to have form 241-CT marked for identification.

The Court: All right.

Now, you have offered some papers for identification and you have offered a letter in evidence?

Mr. Kostelanetz: Of December 14, 1949.

The Court: Then please offer them.

Mr. Kostelanetz: The letter of December 14, 1949 deals with——

The Court: Just give him the paper, he will mark it.

(Letter received in evidence as Plaintiffs' Exhibit 35, as of this date.)

Mr. Kostelanetz: And then all the papers produced in response to the request I would like to have stamped as one exhibit for identification.

[556] The Court: All right.

(Papers produced in response to request marked for identification as Plaintiffs' Exhibit 36, as of this date.)

Mr. Kostelanetz: Now I would like to have marked for identification this Form 241-CT.

(Form 241-CT marked for identification as Plaintiffs' Exhibit 37, as of this date.)

* * *

Defendant's Exhibit A-1

RESOLVED that the President, any Vice President, or counsel for the Corporation, be and hereby is authorized, empowered and directed, to retain, until further notice, Mr. Alfred Wright of Los Angeles, California, to prepare and file answers in the actions instituted respectively by H. L. Gumbiner and Arthur and/or Louis L. Bard in the District Court of the United States for the Southern District of California, Central Division under the so-called Sherman Anti-Trust Act, and in the action instituted by said Arthur and/or Louis L. Bard in the Superior Court of Southern California, Los Angeles County, charging conversion of certain equipment used or useful in the operation of the Colorado Theatre, Pasadena, California; and generally to conduct on behalf of said Trustees in Bankruptcy of Fox West Coast Theatres, Fox West Coast Theatres Corporation, and such of the said corporations' subsidiaries as are named as defendants in such actions, the defense of said actions.

Extract from Minutes
Feb 14, 1935

Defendant's Exhibit B

CONFORMED COPY

New York, N. Y.,
December 5th, 1935.

MR. JOHN J. SULLIVAN,
Los Angeles,
California.

Dear Sir:

1. We hereby employ you, subject to all the terms and conditions of this agreement, for a period of five years from the date hereof.

2. You hereby accept such employment, upon all the terms and conditions of this agreement, and during the term hereof agree to devote your entire time exclusively to such employment and to perform the services herein provided and contemplated to be performed by you faithfully, diligently and to the best of your ability.

3. You shall assist, under the supervision and direction of our board of directors and/or the Chairman of said board and/or our president and/or our executive vice-president from time to time, or of the board of directors and/or the Chairman of said board and/or the president and/or the executive vice-president from time to time of any of our associated companies to which our right to all or any part of your services hereunder may be assigned (our board of directors or the appropriate board of directors of any such associated company, being hereinafter referred to as the "Board of Directors"), or of any person or persons designated by the Board of Directors, in the

Defendant's Exhibit B

purchasing and/or leasing and/or obtaining and booking of motion picture film, stage talent and other theatrical productions and entertainments for exhibition in such of the theatres and theatrical enterprises now or hereafter owned, leased, controlled or operated by us or any of our said associated companies. You shall act only with such powers and in such capacity as the Board of Directors may determine and your activities shall be subject at all times and in all respects to the control and direction of the Board of Directors and of any person or persons designated from time to time or at any time by the Board of Directors, and to the provisions of our by-laws and certificate of incorporation and those of our said associated companies, and to all resolutions and regulations adopted by the Board of Directors. You may (but need not) be elected a director and/or officer of our Corporation or of any of our associated companies and, if elected, you agree to act as such.

The phrase "associated company" as used in this agreement shall be deemed to mean any direct or indirect parent or subsidiary of our Corporation, or any direct or indirect subsidiary of any such parent, or any company associated or affiliated with us or controlled by us or with which we may at any time have, directly or indirectly, any managerial or service contract or arrangement.

* * *

7. For your services hereunder we agree to pay to you, and you agree to accept, as full compensation for such services, during the term of this agreement, a weekly salary at the following rates, for the following periods, payable on any day of the succeeding week:

(*a*) For the first year, the sum of $560 per week;

(*b*) For the second and third years, the sum of $600 per week; and

Defendant's Exhibit B

(*c*) For the fourth and fifth years, the sum of $650 per week.

All services performed by you in any capacity for us or for any of our associated companies shall be rendered without any further salary or compensation other than that above specified and if we or any such associated company shall pay you any other salary or compensation, the same shall be deducted from, and to that extent reduce, any sum or sums payable to you hereunder, and any such sum or sums shall also be reduced by the amount of any claims or set-offs on our part or on the part of any such associated company against you, howsoever arising.

* * *

10. All notices and communications hereunder from us to you shall be deemed to have been duly given if in writing and shall be deemed effective if sent by registered mail to you at 1609 West Washington Blvd., Los Angeles, California, or at such other place as you shall designate in a written notice to us, and all notices and communications hereunder from you to us shall be deemed to have been duly given if in writing and shall be deemed effective when sent by registered mail to us at 19-21 Dover Green, Dover, Delaware, or at such other place as we shall designate by a written notice to you.

* * *

12. This agreement, having been delivered in the State of New York, shall be deemed to be a New York contract with the intention that it be interpreted in accordance with the laws of the State of New York and that the performance hereunder be governed by the laws of the State of New York the same as if it were to be fully performed in said State and that this agreement shall be enforced accordingly.

Defendant's Exhibit B

13. It is understood and agreed that you shall spend as much time in the City of New York or elsewhere as we deem necessary or desirable in connection with the performance of your duties hereunder. In the event, however, that you shall be required, without your consent, to spend more than six months in any one calendar year outside of the City of Los Angeles, you shall have the right to terminate this Agreement at the end of such calendar year by serving written notice thereof upon us at least thirty days prior to the expiration thereof.

We agree to pay, or cause to be paid, to you all reasonable expenses incurred by you in the performance of your duties hereunder while outside of the City of Los Angeles and its immediate vicinity.

Your signature at the foot hereof, under the word "Accepted", together with our signature at the foot hereof, will make this a valid, binding and enforceable agreement between us, it being understood that this agreement may be executed in any number of counterparts, each of which shall be deemed to be one and the same original, valid, binding and enforceable agreement.

Very truly yours,

NATIONAL AGENCY CORPORATION,
By SPYROS P. SKOURAS
President

[CORPORATE SEAL]

Attest:

JOHN P. EDMONDSON
Secretary

Accepted:

JOHN J. SULLIVAN [L. S.]

Defendant's Exhibit B

KNOW ALL MEN, that, in consideration of the acceptance and delivery of the foregoing agreement by JOHN J. SULLIVAN, the undersigned does hereby guarantee that, if said John J. Sullivan shall at all times perform all duties and obligations on his part to be performed under said agreement, NATIONAL AGENCY CORPORATION will pay all sums due said John J. Sullivan thereunder, subject, however, to the terms and conditions thereof.

Dated New York City, N. Y.
December 5th 1935.

NATIONAL THEATRES CORPORATION,
By SPYROS P. SKOURAS
Exec. Vice-President.

[CORPORATE SEAL]

Attest:

JOHN P. EDMONDSON
Secretary.

Defendant's Exhibit E

(Part)

CONSENT OF GUARANTOR

In consideration of the reductions in rental for the months of March to August 1933, both inclusive, indicated in the foregoing Modification Agreement (which is attached hereto and expressly made a part hereof and which is hereinafter sometimes referred to as the "Agreement"), and for other valuable considerations receipt whereof is hereby acknowledged by the undersigned, and concurrently with the execution of said Agreement, in consideration thereof, and as a part of said transaction,

Wesco Corporation, a Delaware corporation, with an office and place of business in the City of New York, State of New York, the Guarantor named in recital "D" of said Agreement (hereinafter sometimes referred to as the "Guarantor") does hereby approve, confirm and consent to all of those certain assignments and transfers indicated in recitals "B", "C", "G", "H", "I", and "J" of said attached Agreement; and does hereby approve, confirm and consent to each, every and all of the covenants, conditions and agreements contained in said attached Agreement;

And the Guarantor does hereby also unconditionally guarantee the due and punctual payment by the Fox Rialto Theatre Corporation, the assignee of said Lease, of each, every and all installments of rent provided to be paid by the Lessee in said Lease, as so amended, and the faithful performance by said assignee corporation of each, every and all of the covenants, conditions and agreements in said Lease contained, as so amended, obligatory upon the Lessee, all in accordance with the terms of said original Guaranty attached to said original Lease and particularly

Defendant's Exhibit E

described in recital "D" above, with like effect as though said Lease were originally written as now amended; and said Guarantor does hereby agree that nothing contained in the attached Agreement shall in any way release, or be construed to release, the said Guarantor from its said guarantee of said Lease as modified.

IN WITNESS WHEREOF the said Wesco Corporation has caused this instrument to be executed by its officers thereunto duly authorized and its corporate seal to be affixed hereto, this 28th day of August, 1933.

WESCO CORPORATION

By S. P. SKOURAS
President

By JOHN P. EDMONDSON
Secretary

Defendant's Exhibit E

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 28th day of August, 1933, before me, MARGARET J. CLANCY, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared S. P. SKOURAS, known to me to be the President and JOHN P. EDMONDSON, known to me to be the Secretary, respectively, of Wesco Corporation, the corporation that executed the within instrument, known to me to be the persons who executed the same on behalf of said corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial seal the day and year in this Certificate first above written.

MARGARET J. CLANCY
Notary Public in and for said
County and State

Approved as to form:

GILDRED BUILDING COMPANY

By PHILIP L. GILDRED
President

By L. LIERD
Secretary

Approved as to form:

FOX RIALTO THEATRE CORPORATION

By CHARLES A. BUCKLEY
President

By ALBERT W. LEEDS
Secretary

Defendant's Exhibit F

THIS AGREEMENT dated this 19 day of January, 1932, by and between WESCO CORPORATION, a Delaware corporation, party of the first part, for itself and its subsidiary and controlled companies (singly and collectively sometimes hereinafter referred to as "Wesco"), and CHARLES SKOURAS, SPYROS SKOURAS and GEORGE SKOURAS, parties of the second part (sometimes hereinafter referred to as the "Managers"), WITNESSETH:

WHEREAS Wesco owns and/or controls, directly or indirectly, through stock ownership or otherwise, a number of companies and enterprises owning and/or operating theatre and other properties, which said companies and enterprises and their respective relations to Wesco are substantially as set forth on charts annexed hereto and marked "Schedule A", and which said companies and enterprises and their properties are hereinafter, for convenience, sometimes referred to as the "subsidiaries" and/or "subsidiary companies" and "theatre properties", respectively, and

WHEREAS the Managers are skilled and experienced in the operation of motion picture theatres and Wesco desires to procure the services of the Managers in managing the entire business of Wesco and such of its subsidiaries as it controls except Hoyts Theatre, Ltd. in Australia,

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

(1) Wesco does hereby, for itself and on behalf of the subsidiaries which it controls and on behalf of its other subsidiaries (subject to the approval of such other subsidiaries to this agreement to the extent required) employ Charles Skouras, Spyros Skouras and George Skouras as the Managers of the business of the corporation and its subsidiaries and the Managers accept such employment.

Defendant's Exhibit F

(2) This agreement shall be effective and operative from the beginning of Wesco's present fiscal year, which for the purpose of this agreement shall be regarded as commencing on December 27, 1931. The duration of this agreement shall be for the term of the present fiscal year of Wesco and the succeeding four fiscal years of Wesco, expiring on December 26, 1936, unless sooner terminated as hereinafter provided.

(3) So far as permitted by law, the Managers shall have full authority to direct, manage and operate all of the business and affairs of Wesco (except as hereinafter in this paragraph (3) and paragraph (12) provided), and, in so far as Wesco during the term of this agreement controls the business and affairs of its subsidiary companies, to direct, manage and operate the business and affairs of such subsidiary companies, including, without limiting the generality of the foregoing language, full authority to employ on behalf of Wesco and its subsidiary companies such persons as the Managers may deem necessary for the proper operation of the business and affairs of Wesco and its subsidiary companies, to discharge such employees, to fix their compensation, to enter into all contracts which in their discretion are necessary or expedient in the proper conduct of the business and affairs of Wesco or its subsidiary companies, to have general charge and direction of the operation and management of the properties of Wesco and of its subsidiary companies, and to do or cause to be done, from time to time, all such acts and things as they in their discretion may deem proper in order to conduct the business and affairs of Wesco and of its subsidiary companies, provided, first, that no changes shall be made by the Managers in the accounting and finance departments of Wesco and/or the subsidiaries, as to methods, personnel or otherwise (as

provided in paragraph (12) hereof), and that such changes. if any, in the accounting and treasury departments of Wesco and/or the subsidiaries shall be made only by the Finance Committee of Wesco, and provided, further, that said authority to direct the affairs of the subsidiary companies shall be subject to the provisions of the existing by-laws of Wesco and its subsidiaries, and particularly such provisions of the by-laws as relate to the finance committees provided for in said by-laws and the powers vested in said finance committees by action of the Boards of Directors of the subsidiary companies, and provided, further, that in directing the affairs of the subsidiary companies the Managers shall keep expenditures within the total budget limitations fixed from time to time by the Finance Committees.

(4) As soon as possible after the date of this agreement, but in no event later than February 1, 1932, Wesco will cause a meeting of its Board of Directors to be held, at which time the Board of Directors will elect Spyros Skouras, or one of the other managers designated by him, a director and the President of Wesco. As soon as convenient, but not later than February 1, 1932, Wesco shall cause Spyros Skouras, or one of the other managers designated by him, to be elected as a director and the President of each of the major subsidiaries of Wesco controlled by it. Wesco, during the term of this agreement, will continue Spyros Skouras, or one of the other managers designated by him, in office as a director and President of Wesco, and will continue Spyros Skouras, or one of the other managers designated by him, as a director and President of each of the major subsidiaries of Wesco controlled by it.

(5) The Managers shall devote their entire time and attention to the management of the business of the sub-

sidiary companies, subject only to their existing obligations to Skouras Theatres Corporation as provided in an agreement dated September 30, 1931, between Fox Theatres Corporation and Skouras, and subject to the other demands upon their services as set forth in said agreement (the pertinent provisions of which are annexed hereto and marked Schedule B). The obligations with respect to Skouras Theatres Corporation include the management of the theatres upstate, New York, proposed to be taken over by a company controlled by Skouras Theatres Corporation.

* * *

(7) The Managers shall receive as compensation for their services under this agreement a drawing account and a percentage of the net profits, as hereinafter defined. The Managers shall receive a drawing account of $3,000 per week, commencing when the Managers begin their duties, which shall be chargeable against their share of the net profits. If at the end of any fiscal year the percentage of the net profiits payable to the Managers under this agreement is less than $3,000 per week, an adjustment shall be made and the Managers shall refund to the subsidiary companies a sum equal to the amount by which the drawing account paid them is in excess of their share of the net profits. The Managers shall be paid their share of the net profits in the manner and at the time and in the amounts hereinafter set forth.

The percentages of the net profits payable to the Managers shall be as follows:

10 per cent. of the annual net profits as hereinafter defined up to the first $1,000,000 of such net profits.

12½ per cent. of said annual net profits in excess of $1,000,000, up to $2,000,000.

Defendant's Exhibit F

15 per cent. of said annual net profits in excess of $2,000,000, up to $3,000,000.

17½ per cent. of said annual net profits in excess of $3,000,000, up to $4,000,000.

20 per cent. of said annual net profits in excess of $4,000,000, up to $5,000,000.

25 per cent. of said annual net profits in excess of $5,000,000, up to $6,000,000.

33⅓ per cent. of said annual net profits in excess of $6,000,000.

* * *

(18) Any notice provided or permitted to be given hereunder by one party to the other shall be deemed sufficient in all respects if sent by registered mail or by telegraph within the prescribed time limit to Wesco at 444 West 56th Street, New York City, if it shall be a notice to Wesco, or to Spyros Skouras, Charles Skouras or George Skouras or to any of them at his business address, if it shall be a notice to the Managers.

* * *

(20) The Corporation hereby agrees that during the term of this agreement it will use its influence to the fullest extent necessary and as may be legally permitted as stockholder to the end that all of its partially owned subsidiary companies and each of them shall accept the services of the Managers as managers of such subsidiary companies and shall to the fullest extent cooperate with the Managers in carrying out the intent and purposes of this agreement.

(21) This agreement having been executed in the State of New York, shall be deemed to be a New York contract

Defendant's Exhibit F

with the intention that it be interpreted in accordance with the laws of the State of New York, and that the performance hereunder be governed by the laws of the State of New York, the same as if it were to be fully performed in said State, and that this agreement shall be enforced accordingly.

* * *

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date hereinabove written.

WESCO CORPORATION

By W. C. MICHEL
Vice President.

CHARLES P. SKOURAS

S. P. SKOURAS

G. P. SKOURAS

Attest:

S. R. BURNS
Secretary.

[CORPORATE SEAL]

The undersigned, Fox Film Corporation, hereby evidences its consent to the foregoing agreement.

FOX FILM CORPORATION,

By E. R. TINKER
President.

Attest:

S. R. BURNS
Secretary.

[CORPORATE SEAL]

Defendant's Exhibit H

AGREEMENT made and entered into this 13th day of June, 1935, between NATIONAL THEATRES CORPORATION, a Delaware corporation (hereinafter referred to as the Corporation), party of the first part, and CHARLES P. SKOURAS of Los Angeles, California, and SPYROS P. SKOURAS of New York, N. Y. (hereinafter sometimes together referred to as the Managers), parties of the second part.

WHEREAS, the Managers have heretofore managed the theatres and/or theatrical enterprises (and certain business and affairs incidental thereto) owned or controlled or operated by the Corporation and/or its past or present subsidiaries in the territory covered by this Agreement; and

WHEREAS, the Corporation desires to be assured of the services of the Managers, to the extent and for the period and upon the terms and conditions hereinafter set forth, with respect to theatres and theatrical enterprises and other business and affairs of the Corporation and/or its subsidiaries, and the Managers are agreeable thereto:

NOW, THEREFORE, in consideration of the premises and of the covenants hereinafter set forth, the parties hereto do hereby mutually agree as follows:

FIRST: (1) The Corporation hereby employs the Managers for the period of time from the date of this Agreement to the close of business on the Saturday nearest December 31, 1944, unless the same be earlier terminated or expire as hereinafter provided.

(2) The Managers, subject to the provisions hereinafter set forth, shall supervise the management of such

theatres and theatrical enterprises owned, controlled or operated by the Corporation in the territory covered by this Agreement, and have such official or executive duties in connection with any other business and affairs of the Corporation in said territory, as the Board of Directors of the Corporation may at any time or from time to time in its discretion determine; and shall supervise the management of such theatres and theatrical enterprises owned, controlled or operated in said territory by subsidiaries of the Corporation which shall accept the services of the Managers under contracts or arrangements satisfactory to the Corporation in its discretion, and have such official or executive duties in connection with any other business and affairs of such subsidiaries in said territory, as the respective Boards of Directors thereof may at any time or from time to time in their discretion determine.

(3) If the Corporation shall at any time or from time to time in its discretion so desire (but not otherwise), the Managers shall also supervise the management of such theatres and theatrical enterprises owned or controlled or operated by the Corporation outside the territory covered by this Agreement, and have such official or executive duties in connection with any other business or affairs of the Corporation outside said territory, as the Board of Directors of the Corporation may at any time or from time to time in its discretion determine; and shall supervise the management of such theatres and theatrical enterprises owned or controlled or operated outside said territory by subsidiaries of the Corporation which shall accept the services of the Managers under contracts or arrangements satisfactory to the Corporation in its discretion, and have such official or executive duties in connection with any other business and affairs of such subsidiaries outside said territory, as the

Defendant's Exhibit H

respective Boards of Directors thereof may at any time or from time to time in their discretion determine.

* * *

(5) The Managers, in performing services or duties hereunder with respect to any theatres or theatrical enterprises or any other business or affairs of the Corporation or any subsidiary thereof, as hereinabove provided, shall act only in such official or executive capacities, if any, and only with such powers, as the Board of Directors of the Corporation or such subsidiary, as the case may be, may at any time or from time to time in its discretion determine, and, in performing such services or duties or serving in such capacities, shall be subject at all times and in all respects to the direction and control of the Board of Directors of the Corporation and such subsidiary, as the case may be, to all provisions of the respective by-laws of the Corporation and such subsidiary and to all resolutions and regulations adopted by the Board of Directors of the Corporation and such subsidiary, respectively. One or both of the Managers may (but need not) at any time or from time to time be elected a director and/or officer of the Corporation or any subsidiary thereof, and, if elected, the Manager or Managers so elected agree to act as such, subject to the provisions of the charter, by-laws or other regulations or resolutions of the Corporation or such subsidiary.

* * *

SECOND: The obligations and duties of the Managers hereunder shall be personal and not assignable or delegable by them in any manner whatsoever. The Corporation may, however, at any time or from time to time in its discretion assign all or any of its rights hereunder to all or any part of the services of the Managers either to any subsidiary or subsidiaries rendering management services directly or

Defendant's Exhibit H

indirectly to theatres or theatrical enterprises or other properties (which may or may not be theatres, enterprises or properties owned, controlled or operated by the Corporation or any of its subsidiaries) or to any subsidiary or subsidiaries of the Corporation owning, controlling or operating theatres or theatrical enterprises or other properties; any rights so assigned may be reassigned at any time to the Corporation or any subsidiary thereof. Notwithstanding any such assignment, the Corporation shall remain unconditionally liable as principal obligor for all obligations to be performed by it hereunder to the extent the same are not fully and finally performed by any such assignee, and the Corporation and the Managers shall retain all their rights hereunder, including without limitation any right to terminate this Agreement or enforce any of the provisions thereof for their own benefit, to the same extent as though no such assignment had taken place. The Managers, in addition to their continuing obligation to the Corporation, shall become directly obligated to each such assignee, insofar as the Corporation's rights are assigned to it, for the performance of their duties and obligations hereunder; but, notwithstanding any such assignment or any assumption connected therewith, neither of the Managers shall have any right or claim against any subsidiary for or on account of or in respect of all or any part of any salary, additional compensation or other sum payable to the Managers hereunder except and then only to the extent at any time expressly consented to in writing by the Corporation, and no subsidiary of the Corporation shall be obligated for said salary or additional compensation or other sum or any part thereof or for the performance of any of the covenants or provisions of this Agreement except and then only to the extent expressly agreed upon in writing at any time by the Corporation and such subsidiary. This provision, however,

Defendant's Exhibit H

shall not prevent the Corporation or any such assignee, if it in its discretion so determines, from receiving from any subsidiary or subsidiaries, under such arrangements as may be made with it or them, all or any part of said salary, additional compensation or other sum payable to the Managers hereunder.

THIRD: (1) The Managers hereby accept employment hereunder upon all the terms and conditions of this Agreement and during the term thereof agree to devote their time, except as specifically provided in subparagraph (b) of Paragraph (2) below and not otherwise, exclusively to such employment and to perform the services herein contemplated to be performed by them faithfully, diligently and to the best of their respective abilities. * * *

* * *

(4) Charles P. Skouras as one of the Managers may reside in or in the vicinity of the City of Los Angeles, California, and in performing services for the Corporation or any subsidiary thereof, as hereinabove provided, may have his principal office at such place in said city as the Board of Directors of the Corporation or such subsidiary, as the case may be, may select. Spyros P. Skouras as the other Manager may reside in or in the vicinity of the City of New York, N. Y., or the Cities of Newark or Jersey City, N. J., and in performing services for the Corporation or any subsidiary thereof, as hereinabove provided, may have his office at such place in any one or more of said cities designated by the Board of Directors of the Corporation or such subsidiary, as the case may be, as such Board may select. If either of the Managers shall die or become incapacitated or this Agreement be terminated as to said Spyros P. Skouras, then the surviving or continuing Man-

ager shall then have his office at such place in New York City, Los Angeles, Newark or Jersey City, as the Board of Directors of the Corporation or such subsidiary may select, and shall then reside in or in the vicinity of the city so selected.

FOURTH: (1) Upon and in consideration of the execution and delivery of this Agreement by the Managers, the Corporation has paid to the Managers jointly the sum of $65,582.10, receipt whereof is hereby acknowledged by the Managers.

(2) From and after the date of this Agreement, for all services of every kind rendered by the Managers hereunder during the term of this Agreement, the Corporation, at the times hereinafter specified, will pay or cause to be paid to the Managers jointly as salary the amount described in subdivision (a) below and as additional compensation the amount described in subdivision (b) below, that is to say:

(a) as salary hereunder, commencing with the date of this Agreement, the fixed sum of Three Thousand Dollars ($3,000) per week, payable at the end of each week or on any day of the succeeding week during the term of this Agreement;

(b) as additional compensation hereunder, a sum for each fiscal year during the term of this Agreement equal to the following percentages or fractions of the Contract Annual Profits (hereinafter defined) in such year, to-wit:

1/9th of the first Five Hundred Sixty-Two Thousand Five Hundred Dollars ($562,500) or any part thereof of such Contract Annual Profits;

Defendant's Exhibit H

3/23rds of the next Five Hundred Seventy-Five Thousand Dollars ($575,000) or any part thereof of such Contract Annual Profits;

7/47ths of the next Five Hundred Eighty-Seven Thousand Five Hundred Dollars ($587,500) or any part thereof of such Contract Annual Profits;

1/6th of the next One Million Two Hundred Thousand Dollars ($1,200,000) or any part thereof of such Contract Annual Profits;

3/23rds of the next One Million One Hundred Fifty Thousand Dollars ($1,150,000) or any part thereof of such Contract Annual Profits; and finally

1/11th of the next One Million One Hundred Thousand Dollars ($1,100,000) or any part thereof of such Contract Annual Profits;

provided that if the Corporation's fiscal year shall be changed at any time and as a result Contract Annual Profits or Contract Annual Losses are calculated for an accounting term less than a full fiscal year of fifty-two or fifty-three weeks (other than the accounting term provided for in the last paragraph of Article NINTH hereof), the above portions of Contract Annual Profits shall be reduced, for the purpose of calculating additional compensation for such shorter accounting term and not otherwise, to the respective amounts which bear the same relations to the amounts set forth above, respectively, as the number of days in such accounting term bears to 365.

* * *

Defendant's Exhibit H

SIXTEENTH: This Agreement, which shall not be deemed to constitute either of the Managers partners with the Corporation or with each other, is to be construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Agreement the day and year first above written.

NATIONAL THEATRES CORPORATION

By H. C. Cox
Vice-President

(CORPORATE SEAL)

ATTEST:

A. S. GAMBEE
Ass't. Secretary

CHARLES P. SKOURAS (L. S.)

SPYROS P. SKOURAS (L. S.)

WITNESS:

ARTHUR A. GOLDBERG

Defendant's Exhibit I.

PROMISSORY NOTE

$65,000 June 25, 1932.

On Demand after date FOR VALUE RECEIVED the undersigned hereby promises to pay to Fox West Coast Service Corporation or order, at the main office of THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, Pine Street corner of Nassau, Borough of Manhattan, in the City of New York, N. Y.,

SIXTY-FIVE THOUSAND AND 00/100 DOLLARS ($65,000), with interest at the rate of 6% per annum payable monthly.

It is further agreed that if the undersigned or any endorser and/or guarantor hereof shall become insolvent (however such insolvency may be evidenced) or make a general assignment for the benefit of creditors, or if the undersigned shall suspend the transaction of its usual business, or if a petition in bankruptcy shall be filed by or against, or if a receiver shall be appointed of, or a writ or order of attachment or garnishment shall be issued or made against any of the property or assets, or any part thereof, of the undersigned, or of any such endorser or guarantor, thereupon, unless the holder hereof shall otherwise elect, this note and all other present or future demands of any and all kind against the undersigned, whether absolute or contingent, shall become and be due and payable forthwith, without presentation, demand, protest, notice of protest or other notice of dishonor of any kind, all of which are hereby expressly waived.

PASADENA THEATRE CORPORATION

by CHARLES P. SKOURAS
President.

J. N. SCHMITZ
Asst. Treasurer.

Address: 1609 West Washington Street,
Los Angeles, California.

Defendant's Exhibit I

ENDORSEMENTS AND GUARANTIES OF PAYMENT

IN CONSIDERATION of One Dollar ($1.00), receipt whereof is hereby acknowledged, and of the credit given or discount, loan or extension of time made by or upon the within note, which the undersigned requested, the undersigned (if more than one jointly and severally), hereby unconditionally guarantee to THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, New York, its successors and assigns, and every subsequent holder of said note, irrespective of the genuineness, validity, regularity or enforceability thereof, or of the obligation evidenced thereby, or of the obligation evidenced thereby, or of any collateral at any time given therefor, or of the existence or extent of any such collateral, and irrespective of any other circumstance, that all sums stated therein to be payable thereunder shall be promptly paid in full when due, in accordance with the provisions thereof, at maturity, by acceleration or otherwise, and, in case of extension of time of payment in whole or in part, all said sums shall be promptly paid when due according to such extension or extensions at maturity, by acceleration or otherwise; and the undersigned hereby consent that from time to time, without notice to the undersigned, payment of any sums payable under said note, or of any collateral therefor, may be extended in whole or in part or any of said collateral be exchanged, surrendered or otherwise dealt with as the holder of the within note may determine. The signature or signatures of the undersigned hereto is or are intended as an endorsement of the within note as well as the execution of the foregoing guaranty of payment thereof by each of the undersigned, who hereby

respectively waive presentment, demand of payment from the maker, protest and notice of non-payment or protest.

FOX WEST COAST SERVICE CORPORATION,

by H. G. FAHLBUSCH
President.

CHARLES A. BUCKLEY
Treasurer.

Address:

1609 West Washington Boulevard, Los Angeles, Calif.

WESCO CORPORATION,

by S. P. SKOURAS
President.

CHAS. E. RICHARDSON
Treasurer.

Address:

444 West 56th Street
New York, N. Y.

FOX WEST COAST THEATRES,

by S. P. SKOURAS
President.

CHARLES A. BUCKLEY
Treasurer.

Address:

1609 West Washington Boulevard, Los Angeles, Calif.

Defendant's Exhibit J

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

HILLSIDE AMUSEMENT COMPANY, Plaintiff, —*against*— WARNER BROS. PICTURES, INC., et al., Defendants.	Civil Action No. 13-77

Sir:

PLEASE TAKE NOTICE that the defendant National Theatres Corporation hereby appears in the above entitled action, and that we have been retained as attorneys for said defendant therein, and demand that a copy of the complaint and all papers in this action be served upon us at our office, No. 100 Broadway, Borough of Manhattan, City, County and State of New York.

Dated: New York, N. Y., October 7th 1941.

Yours, etc.,

DWIGHT, HARRIS, KOEGEL & CASKEY
Dwight, Harris, Koegel & Caskey,
Attorneys for Defendant National Theatres Corporation,
Office and P. O. Address
100 Broadway
Borough of Manhattan,
New York, N. Y.

To:

NORMAN H. SAMUELSON, ESQ.,
Attorney for Plaintiff,
Office and P. O. Address
39 Broadway,
New York, N. Y.

Defendant's Exhibit K

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

HILLSIDE AMUSEMENT CO., Plaintiff, —*against*— WARNER BROS. PICTURES, INC., et al., Defendants.	Civil Action No. 13-77 ORDER

The defendant National Theatres Corporation having moved this Court for an order setting aside and quashing service upon such defendant, and this Court having heard William W. Owens, Esq., of counsel for the defendant National Theatres Corporation, in support of said motion and Norman H. Samuelson, Esq., attorney for defendant, in opposition thereto; and this Court having rendered an opinion thereon dated July 11, 1941 providing for a reference; and no further action having been taken thereon by either plaintiff or defendant National Theatres Corporation; and defendant National Theatres Corporation having on October 8, 1941 entered its general appearance herein; and the attorneys for defendant National Theatres Corporation having suggested to the Court that said motion has now become moot by reason of such general appearance; and the attorney for plaintiff having consented to the making and entry of this order, it is

ORDERED, ADJUDGED and DECREED that the motion of defendant National Theatres Corporation to set aside and

Defendant's Exhibit K

quash the service of the summons upon it be and the same is hereby dismissed without costs to either party.

Dated: New York, October 1941.

.....
U. S. D. J.

The making and entry of the above order is hereby consented to, and notice with respect thereto is waived.

NORMAN H. SAMUELSON
Attorney for Plaintiff

Defendant's Exhibit L

IN THE

DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

H. L. GUMBINER,

Plaintiff,

vs.

FOX WEST COAST THEATRES, a corporation, Bankrupt, CHARLES P. SKOURAS, WILLIAM H. MOORE, JR. and CHARLES C. IRWIN, as Trustees in Bankruptcy of the Estate of Fox West Coast Theatres, a corporation, Bankrupt; FOX WEST COAST THEATRES CORPORATION, a corporation, PRINCIPAL THEATRES, INC., a corporation, DOWN TOWN THEATRES, INC., a corporation, COMBINED THEATRES CORP., a corporation, FOX COSMOPOLITAN THEATRE CO., LTD., a corporation, METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION, a corporation, FOX FILM CORPORATION, a corporation, PARAMOUNT PICTURES DISTRIBUTING CO., INC., a corporation, VITAGRAPH, INC., a corporation, R-K-O DISTRIBUTING CORPORATION, INC., a corporation, UNITED ARTISTS CORPORATION, a corporation, COLUMBIA PICTURES CORPORATION, a corporation, UNIVERSAL FILM EXCHANGE, INC., a corporation, FIRST NATIONAL PICTURES, INC., a corporation, CHARLES P. SKOURAS, JOHN DOE ONE, JOHN DOE TWO, JOHN DOE THREE, JOHN DOE ONE COMPANY, a corporation, JOHN DOE TWO COMPANY, a corporation, JOHN DOE THREE COMPANY, a corporation, JOHN DOE FOUR COMPANY, a corporation, JOHN DOE FIVE COMPANY, a corporation,

Defendants.

IN EQUITY

No. 520-M

BILL OF COMPLAINT FOR INJUNCTION AND DAMAGES UNDER SHERMAN ANTI-TRUST ACT AND CLAYTON ACT.

Plaintiff brings this bill of complaint and action for an injunction and damages against the defendants, and each of them, under and pursuant to the provisions of the

Defendant's Exhibit L

Act of Congress of July 2, 1890, entitled "An Act to protect Trade and Commerce against Unlawful Restraints and Monopolies" (26 Stats. 209), commonly known as the Sherman Anti-Trust Act), and the provisions of the Act of Congress of October 15, 1914, as amended May 15, 1918 and May 26, 1920, entitled "An Act to supplement Existing Laws against Unlawful Restraints and Monopolies and for other Purposes (38 Stats. 730, commonly known as the Clayton Act), both of said Acts being further known as Chapter 1, of Title 15, of the Code of Laws of the United States of America, and for cause of action against the defendants, and each of them, alleges:

I

That plaintiff is a citizen and a resident of the State of California.

II

That plaintiff is informed and believes, and therefore alleges, that the following named defendants, and each of them, are corporations duly organized and existing under and by virtue of the laws of the respective states set opposite their respective names:

Fox West Coast Theatres	Delaware
Fox West Coast Theatres Corporation	Delaware
Principal Theatres, Inc.	California
Down Town Theatres, Inc.	California
Combined Theatres Corp.	California
Fox Cosmopolitan Theatre Co., Ltd.	California
Metro-Goldwyn-Mayer Distributing Corporation	New York
Fox Film Corporation	New York
Paramount Pictures Distributing Co., Inc.	New Jersey

Defendant's Exhibit L

Vitagraph, Inc.	New York
R-K-O Distributing Corporation	Delaware
United Artists Corporation	Delaware
Columbia Pictures Corporation	New York
Universal Film Exchange, Inc.	Delaware
First National Pictures, Inc.	Delaware

III

That on or about the 28th day of February, 1933, upon a voluntary petition duly filed in the above entitled court, said Fox West Coast Theatres, a corporation, was adjudicated bankrupt and Charles P. Skouras, William H. Moore, Jr. and Charles C. Irwin were regularly elected to be, and qualified as, the Trustees of the bankrupt estate of said Fox West Coast Theatres, a corporation, Bankrupt, and said Charles P. Skouras, William H. Moore, Jr. and Charles C. Irwin have been at all times thereafter, and now are, the duly elected, appointed, qualified and acting Trustees in Bankruptcy of the Estate of Fox West Coast Theatres, a corporation, Bankrupt.

IV

That the defendants Charles P. Skouras, William H. Moore, Jr. and Charles C. Irwin, as Trustees in Bankruptcy of the Estate of Fox West Coast Theatres, a corporation, Bankrupt, the defendant Fox West Coast Theatres Corporation, the defendant Principal Theatres, Inc., the defendant Down Town Theatres, Inc. the defendant Combined Theatres Corp. and the defendant Fox Cosmopolitan Theatre Co., Ltd. have, and that each of them has, its/their office and place of business at 1837 South Vermont Avenue, Los Angeles, in this state and district.

* * *

Defendant's Exhibit L

That the defendant Fox Film Corporation has its office and place of business at 2019 South Vermont Avenue, Los Angeles, in this state and district.

* * *

That the defendant Charles P. Skouras has an office and place of business at 1837 South Vermont Avenue, Los Angeles, in this state and district.

V

That the true names of the defendants John Doe One, John Doe Two, John Doe Three, John Doe One Company, a corporation, John Doe Two Company, a corporation, John Doe Three Company, a corporation, John Doe Four Company, a corporation, and John Doe Five Company, a corporation, are at this time unknown to plaintiff, and plaintiff will ask leave of this court to amend his complaint and insert said true names when said true names are by plaintiff ascertained.

VI

DESCRIPTION OF INDUSTRY

* * *

VII

INTERSTATE COMMERCE IN MOTION PICTURES.

* * *

VIII

CONTINUITY OF INTERSTATE COMMERCE

* * *

Defendant's Exhibit L

IX

DEFENDANTS ARE ENGAGED IN INTERSTATE COMMERCE.

During all of the time herein mentioned the defendants were, and they are now, engaged in interstate commerce, in that—

1. The defendants, Metro-Goldwyn-Mayer Distributing Corporation, Fox Film Corporation, Paramount Pictures Distributing Co., Inc., Vitagraph, Inc., R-K-O Distributing Corporation, United Artists Corporation, Columbia Pictures Corporation, Universal Film Exchange and First National Pictures, Inc., at all times herein mentioned have been, and now are, engaged in the business of distributing motion picture films, and said defendants, and each of them, did, and do, conduct and maintain their said business in the manner hereinabove alleged.

2. The defendants Fox West Coast Theatres, a Bankrupt, Charles P. Skouras, William H. Moore, Jr. and Charles C. Irwin, as Trustees in Bankruptcy of the Estate of Fox West Coast Theatres, a corporation, Fox West Coast Theatres Corporation, Principal Theatres, Inc., Down Town Theatres, Inc., Combined Theatres Corp. and Fox Cosmopolitan Theatre Co., Ltd. are hereinafter sometimes referred to as "defendant exhibitors", and they are, and each of them is, engaged in the business of conducting and operating motion picture theatres, exhibiting motion picture film contracted for, produced, distributed and exhibited as herein alleged, as follows:

(a) At all times herein alleged prior to the date of the bankruptcy of Fox West Coast Theatres, said corporation controlled, directly or indirectly, over four hundred theatres

located throughout the western part of the United States, ranging from the state of Illinois to the Pacific Coast and from Mexico to Canada. Said control was effected by an elaborate system of subsidiary corporations in which said defendant owned all or a part of the stock. Such subsidiary corporations were, and are, more than one hundred and fifty in number, and such subsidiaries owned and operated theatres and, in turn, owned the whole or a part of the stock of other subsidiaries which also, in turn, owned and operated theatres, and likewise owned the whole or a part of stock in still other subsidiaries owning and operating theatres, to the extent that in some instances as many as five subsidiary corporations and the stock thereof intervened between the parent corporation, Fox West Coast Theatres, and the corporation owning and operating the theatre.

(b) The defendant Fox West Coast Theatres, from and after February 25, 1933, and until its adjudication in bankruptcy on February 28, 1933, owned all of the stock of Fox West Coast Theatres Corporation, and at all times after said adjudication in bankruptcy, and now, the defendant trustees own and hold all of the stock of the defendant Fox West Coast Theatres Corporation. At all times herein alleged prior to February 25, 1933, the defendant Fox West Coast Theatres owned and held, and at all times after February 25, 1933, the defendant Fox West Coast Theatres Corporation owned and held, and now owns and holds, the whole or a part of the stock of twenty-nine, or more, subsidiaries engaged in operating motion picture theatres, as above alleged, and, particularly, as above alleged, the said defendants, Fox West Coast Theatres and Fox West Coast Theatres Corporation, owned and held, and the defendant Fox West Coast Theatres Corporation now owns and holds, in excess of fifty per cent of the

stock of the defendant Principal Theatres, Inc., the defendant Down Town Theatres, Inc., the defendant Combined Theatres Corp. and the defendant Fox Cosmopolitan Theatre Co., Ltd. The said defendants Fox West Coast Theatres and Fox West Coast Theatres Corporation, at the times above alleged respectively owned and held, and Fox West Coast Theatres Corporation now owns and holds all of the stock of Fox West Coast Service Corporation. At all times herein mentioned said Fox West Coast Service Corporation acted as a fiscal agent for all of the subsidiary corporations, collected all of the moneys from the operation of the theatres, paid all the bills for the operation of the theatres, bore the general expense, kept separate sets of books for each subsidiary corporation, employed and paid all the officials and employees of the various offices, made all necessary purchases, furnished all necessary service, and arranged for the purchase, distribution and booking of films in all of the theatres and also in numerous other motion picture theatres not otherwise owned or operated by or connected with the defendants.

(c) The defendants Principal Theatres, Inc., Down Town Theatres, Inc., Combined Theatres Corp. and Fox Cosmopolitan Theatre Co., Ltd., own and/or operate six, or more, downtown motion picture theatres in the City of Los Angeles, including the President Theatre, the Rialto Theatre, the Roxie Theatre, the Orpheum Theatre, the Palace Theatre and Loew's State Theatre. That Loew's State Theatre is a first-run theatre; that the President Theatre, the Rialto Theatre and the Orpheum Theatre are second-run theatres; and that the Roxie Theatre and the Palace Theatre are third and/or fourth-run theatres, and that all of said theatres are downtown theatres located on Broadway in the City of Los Angeles in close proximity to,

and operated in competition with the theatres owned and/or operated by the plaintiff, as hereinafter alleged.

3. Defendant Charles P. Skouras is the president of Fox West Coast Theatres Corporation and the general manager of all of the businesses alleged in subdivisions (a), (b) and (c) of this paragraph.

X

Plaintiff Is Engaged in Interstate Commerce.

At all times herein mentioned subsequent to January 30, 1931, and prior to December *8th,* 1931, plaintiff operated the Los Angeles Theatre in the City of Los Angeles, California. Said Los Angeles Theatre was, and is, located on the west side of Broadway, between Sixth and Seventh Streets, in said City of Los Angeles, California, being a central and desirable location in said city, and in all other respects said Los Angeles Theatre was, and is, designed, constructed and equipped as a first-run downtown theatre. At all times in this paragraph mentioned plaintiff exhibited therein motion picture films contracted for, produced, distributed and exhibited in interstate commerce.

At all times herein mentioned plaintiff also operated the Tower and Cameo theatres in the City of Los Angeles, California. Said Tower Theatre is located at the southeast corner of Eighth and Broadway, in said City of Los Angeles, California, it being a central and desirable location in said city, and in all other respects said Tower Theatre is designed, constructed and equipped as a first or second-run downtown theatre. Said Cameo Theatre is located on the east side of Broadway, between Fifth and Sixth Streets,

in said City of Los Angeles, California, it being a central and desirable location in said city, and in all other respects said Cameo Theatre is designed, constructed and equipped as a second or third-run downtown theatre. At all times herein mentioned plaintiff exhibited in said Tower Theatre and said Cameo Theatre motion picture films contracted for, produced, distributed and exhibited in interstate commerce.

XI

THE CONSPIRACY.

The defendants, and each of them, well knowing all of the matters and things hereinbefore alleged, unlawfully conspired and engaged in a conspiracy in a restraint of said interstate trade and commerce in motion picture films so carried on by said defendant distributors and by said defendant exhibitors, and the plaintiff exhibitor, as aforesaid; that is to say, a conspiracy here now described in restraint of, and which throughout the period, or periods, of time herein mentioned, in fact, unlawfully did restrain said interstate trade and commerce, to-wit:

* * *

(i) To exclude plaintiff, in the course of the aforesaid interstate trade and commerce, from operating said Los Angeles Theatre in the City of Los Angeles, California, as a first-run motion picture theatre.

(j) To exclude plaintiff, in the course of the aforesaid interstate trade and commerce, from operating said Los Angeles and/or Tower and/or Cameo theatres, in the City of Los Angeles, California, as second and/or third and/or subsequent run motion picture theatres.

Defendant's Exhibit L

(k) To exclude plaintiff, in the course of the aforesaid interstate trade and commerce, from operating said Los Angeles Theatre, in the City of Los Angeles, California, as a first-run motion picture theatre in competition with the theatres operated by the defendant exhibitors.

(l) To exclude plaintiff, in the course of the aforesaid interstate trade and commerce, from operating said Los Angeles and/or Tower and/or Cameo theatres, in the City of Los Angeles, California, as second and/or third and/or subsequent run motion picture theatres in competition with the theatres operated by the defendant exhibitors.

(m) To coerce and compel plaintiff, in the course of the aforesaid interstate trade and commerce, to cease to operate the Los Angeles Theatre, in the City of Los Angeles, California, as a first-run motion picture theatre.

(n) To coerce and compel plaintiff, in the course of the aforesaid interstate trade and commerce, to cease to operate the Los Angeles and/or Tower and/or Cameo theatres, in the City of Los Angeles, California, as second and/or third and/or subsequent run motion picture theatres.

(o) To coerce and compel plaintiff, in the course of the aforesaid interstate trade and commerce, to cease to operate the Los Angeles Theatre, in the City of Los Angeles, California, as a first-run motion picture theatre in competition with the theatres operated by the defendant exhibitors.

(p) To coerce and compel plaintiff, in the course of the aforesaid interstate trade and commerce, to cease to operate the Los Angeles and/or Tower and/or Cameo theatres, in the City of Los Angeles, California, as second and/or third and/or subsequent run motion picture theatres in competition with the theatres operated by the defendant exhibitors.

Defendant's Exhibit L

All with the intent and for the purpose of coercing, compelling and excluding plaintiff, as hereinabove alleged, and all in the manner and by the means and through the acts hereinafter set forth.

XII

Means and Acts

Defendants, and each of them, have carried out the aforesaid unlawful purposes and objects in the following manner and by the following means, to-wit:

A

That during the period commencing January 30, 1931, and ending approximately September 1, 1931, which latter date was, to the best of plaintiff's information and belief, the end of the 1930-1931 motion picture year, or, as the same is known in the motion picture industry, the 1930-1931 season, plaintiff required for the operation of the Los Angeles Theatre, in the City of Los Angeles, California, the right to exhibit, as first-run motion pictures in said theatre, not less than thirty-two (32) first-run feature motion pictures. * * *

* * *

Plaintiff alleges that he does not know the exact date of the illegal agreement, combination and conspiracy now about to be alleged, but, on information and belief, plaintiff alleges that on or about the 1st day of February, 1931, the defendants . . . undertook, promised, covenanted and agreed, each with the other, that thereafter none of said feature motion pictures distributed by said defendant distributors

should be furnished, delivered or made available for use to plaintiff in said Los Angeles Theatre for exhibition as first, second or third-run motion pictures. * * *

That certain of said defendant exhibitors at that time operating theatres competing with plaintiff's, contracted for and purchased first, second and third-run feature motion pictures of defendant distributors in excess of their needs and requirements in the theatres operated by them, and thereafter frequently paid for pictures not exhibited by them and/or acquired additional theatres in which to exhibit said surplus pictures and/or supplied said surplus pictures to other theatres in return for an interest in the profits of such other theatres; all with the intent and for the purpose of preventing plaintiff from obtaining the motion pictures required by him to operate said Los Angeles Theatre and with the intent and for the purpose to force him out of business, which purpose said defendants accomplished on December 8, 1931.

B

That during the period of one year commencing with the late summer or early fall of the year 1932 and ending with the late summer or early fall of the year 1933, which period of time is hereinafter referred to as the season of 1932-1933, plaintiff required for the operation of the Tower Theatre and the Cameo Theatre in the City of Los Angeles, California, the right to exhibit, as second-run motion pictures in said Tower Theatre and as third-run motion pictures in said Cameo Theatre, not less than fifty-two (52) second-run feature motion pictures and not less then fifty-two (52) third-run feature motion pictures. . . .

* * *

Defendant's Exhibit L

XIII

The Result.

As a direct and proximate result of all of the acts and things had and done by the defendants, as hereinabove alleged, all of the purposes alleged in the preceding paragraph numbered XI have been, and are, accomplished and, in particular, as a direct and proximate result of the acts and things had and done by the defendants, as hereinabove alleged, the plaintiff was, and has been:

* * *

(i) Precluded, excluded and prevented from operating said Los Angeles Theatre in the City of Los Angeles, California, as a first-run motion picture theatre.

(j) Precluded, excluded and prevented from operating said Los Angeles and/or Tower and/or Cameo in the City of Los Angeles, California, as second and/or third and/or subsequent-run motion picture theatres.

(k) Precluded, excluded and prevented from operating said Los Angeles Theatre in the City of Los Angeles, California, as a first-run motion picture theatre in competition with the theatres operated by the defendant exhibitors.

(l) Precluded, excluded and prevented from operating said Los Angeles and/or Tower and/or Cameo Theatres in the City of Los Angeles, California, as second and/or third and/or subsequent run motion picture theatres in competition with the theatres operated by the defendant exhibitors.

(m) Coerced and compelled to cease to operate the Los Angeles Theatre in the City of Los Angeles as a first-run motion picture theatre.

Defendant's Exhibit L

(n) Coerced and compelled to cease to operate the Los Angeles and/or Tower and/or Cameo Theatres in the City of Los Angeles, California, as second and/or third and/or subsequent-run motion picture theatres.

(o) Coerced and compelled to cease to operate the Los Angeles Theatre in the City of Los Angeles, California, as a first-run motion picture theatre in competition with the theatres operated by the defendant exhibitors.

(p) Coerced and compelled to cease to operate the Los Angeles and/or Tower and/or Cameo Theatres in the City of Los Angeles, California, as second and/or third and/or subsequent-run picture theatres in competition with the theatres operated by the defendant exhibitors.

XIV

Damage

As a direct and proximate result of the acts and things had and done by the defendants, as hereinabove alleged, and as a direct and proximate result of having been precluded, excluded and prevented, and coerced and compelled, as hereinabove alleged, plaintiff has been damaged and injured in the sum of One Million Five Hundred Twenty Thousand ($1,520,000.00) Dollars.

Pursuant to the act commonly known as the Sherman Anti-Trust Act, said damages in the sum of One Million Five Hundred Twenty Thousand ($1,520,000.00) Dollars should be trebled.

* * *

Defendant's Exhibit L

XVI

The defendants, and each of them, threaten to, and will, unless enjoined and restrained by the order of this Court from continuing their aforesaid unlawful and burdensome acts, continue in the performance thereof. That notwithstanding that plaintiff has on divers and numerous occasions sought to obtain from the defendants, and each of them, his fair and just proportion of said defendants' motion pictures, they have refused to permit plaintiff to exhibit the same.

* * *

AND AS AND FOR A FURTHER, SEPARATE AND SECOND CAUSE OF ACTION, PLAINTIFF REPEATS AND REALLEGES ALL, EACH AND EVERY PARAGRAPH OF THE FIRST CAUSE OF ACTION, SAVE AND EXCEPT PARAGRAPH XI, AND MAKES THE SAME A PART HEREOF BY REFERENCE AS FULLY AND COMPLETELY AS THOUGH SET FORTH HEREIN AT LENGTH.

I

COMBINATION IN RESTRAINT OF TRADE.

The defendants, and each of them, well knowing all of the matters and things hereinbefore alleged, unlawfully engaged in a combination in restraint of said interstate trade and commerce in motion picture films so carried on, as aforesaid, by said defendant distributors, by said defendant exhibitors, and by said plaintiff exhibitor; that is to say, in a combination here now described in restraint of and which throughout the period of time herein mentioned, in fact, unlawfully did restrain said interstate trade and commerce, to-wit: a combination:

* * *

Defendant's Exhibit L

(i) To preclude, exclude and prevent plaintiff from operating said Los Angeles Theatre in the City of Los Angeles, California, as a first-run motion picture theatre.

(j) To preclude, exclude and prevent plaintiff from operating said Los Angeles and/or Tower and/or Cameo Theatres in the City of Los Angeles, California, as second and/or third and/or subsequent run motion picture theatres.

(k) To preclude, exclude and prevent plaintiff from operating said Los Angeles Theatre in the City of Los Angeles, California, as a first-run motion picture theatre in competition with the theatres operated by the defendant exhibitors.

(l) To preclude, exclude and prevent plaintiff from operating said Los Angeles and/or Tower and/or Cameo Theatres in the City of Los Angeles, California, as second and/or third and/or subsequent run motion picture theatres in competition with the theatres operated by the defendant exhibitors.

(m) To coerce and compel plaintiff to cease to operate the Los Angeles Theatre in the City of Los Angeles, California, as a first-run motion picture theatre.

(n) To coerce and compel plaintiff, to cease to operate the Los Angeles and/or Tower and/or Cameo Theatres in the City of Los Angeles, California, as second and/or third and/or subsequent run motion picture theatres.

(o) To coerce and compel plaintiff to cease to operate the Los Angeles Theatre in the City of Los Angeles, California, as a first-run motion picture theatre in competition with the theatres operated by the defendant exhibitors.

(p) To coerce and compel plaintiff to cease to operate the Los Angeles and/or Tower and/or Cameo Theatres in

the City of Los Angeles, California, as second and/or third and/or subsequent run motion picture theatres in competition with the theatres operated by the defendant exhibitors.

All with the intent and for the purpose of precluding, excluding, preventing, coercing and compelling plaintiff as herein alleged, and all in the manner and by the means and through the acts herein set forth.

AND AS AND FOR A FURTHER, SEPARATE AND THIRD CAUSE OF ACTION, PLAINTIFF REPEATS AND REALLEGES ALL, EACH AND EVERY PARAGRAPH OF THE FIRST CAUSE OF ACTION, SAVE AND EXCEPT PARAGRAPH XI, AND MAKES THE SAME A PART HEREOF BY REFERENCE AS FULLY AND COMPLETELY AS THOUGH SET FORTH HEREIN AT LENGTH.

I

MONOPOLY

That the defendants, and each of them, well knowing all of the matters and things hereinbefore alleged, unlawfully engaged in a combination to monopolize and to attempt to monopolize said interstate trade and commerce in motion picture films so carried one, as aforesaid, by said defendant distributors, by said defendant exhibitors, and plaintiff exhibitor, and that said combination did, and does, monopolize said interstate trade and commerce in motion picture films in the City of Los Angeles, California, and which combination will continue to monopolize the interstate trade and commerce in motion picture films in the City of Los Angeles, California, which combination had, and has, the following effects and results:

* * *

Defendant's Exhibit L

(i) Of precluding, excluding and preventing plaintiff from operating said Los Angeles Theatre in the City of Los Angeles, California, as a first-run motion picture theatre.

(j) Of precluding, excluding and preventing plaintiff from operating said Los Angeles and/or Tower and/or Cameo Theatres in the City of Los Angeles, California, as second and/or third and/or subsequent run motion picture theatres.

(k) Of precluding, excluding and preventing plaintiff from operating said Los Angeles Theatre in the City of Los Angeles, California, as a first-run motion picture theatre in competition with the theatres operated by the defendant exhibitors.

(l) Of precluding, excluding and preventing plaintiff from operating said Los Angeles and/or Tower and/or Cameo Theatres in the City of Los Angeles, California, as second and/or third and/or subsequent run motion picture theatres in competition with the theatres operated by the defendant exhibitors.

(m) Of coercing and compelling plaintiff to cease to operate the Los Angeles Theatre in the City of Los Angeles, California, as a first-run motion picture theatre.

(n) Of coercing and compelling plaintiff to cease to operate the Los Angeles and/or Tower and/or Cameo Theatres in the City of Los Angeles, California, as second and/or third and/or subsequent run motion picture theatres.

(o) Of coercing and compelling plaintiff to cease to operate the Los Angeles Theatre in the City of Los Angeles, California, as a first-run motion picture theatre in com-

petition with the theatres operated by the defendant exhibitors.

(p) Of coercing and compelling plaintiff to cease to operate the Los Angeles and/or Tower and/or Cameo Theatres in the City of Los Angeles, California, as second and/or third and/or subsequent run motion picture theatres in competition with the theatres operated by the defendant exhibitors.

All with the intent and for the purpose of precluding, excluding, preventing, coercing and compelling plaintiff as herein alleged, and all in the manner and by the means and through the acts herein set forth.

WHEREFORE, plaintiff prays:

1. That writs of subpoena issue out of this Honorable Court directed to the defendants, ...

2. That the defendants, and each of them, and each and all of the respective officers and directors, and each and all of the respective agents, servants and employees of the defendants, and each of them, and all persons, acting or claiming to act on behalf of the defendants, or any of them, be perpetually enjoined and restrained from continuing to carry out, directly or indirectly, the monopoly and restraint of interstate trade and commerce in motion pictures described herein, and from entering into and/or carrying out, directly or indirectly, any monopoly or restraint of interstate trade and commerce in motion pictures similar to that alleged herein.

3. That the defendants, and each of them, and each and all of the respective officers and directors, and each and

all of the respective agents, servants and employees of the defendants, and each of them, and all persons, acting or claiming to act on behalf of the defendants, or any of them, be enjoined from performing, or continuing to perform, any and all of the illegal acts in this bill of complaint set forth as a means of effectuating the said monopoly and restraint of interstate trade and commerce in motion pictures.

4. That a mandatory injunction issue herein commanding and enjoining the defendants, and each of them, to lease, deliver and/or furnish unto plaintiff a fair and just proportion of said motion pictures at the fair and reasonable value thereof for plaintiff's theatres in the City of Los Angeles, California.

* * *

7. That the plaintiff have and recover damages against the defendants Down Town Theatres, Inc., a corporation, and Charles P. Skouras, and each of them, in the sum of Six Hundred Twenty Thousand ($620,000.00) Dollars; that said damages be trebled; for attorney's fees in the sum of One Hundred Thousand ($100,000.00) Dollars; for costs of this suit and for such other and further relief as may be proper in the premises.

8. That the plaintiff have and recover damages against the defendants Charles P. Skouras, William H. Moore, Jr., and Charles C. Irwin, as trustees in bankruptcy of the estate of Fox West Coast Theatres, Inc., a corporation, and each of them, in the sum of Five Hundred Ninety Thousand ($590,000.00) Dollars; that said damages be trebled; for attorney's fees in the sum of One Hundred Thousand ($100,000.00) Dollars; for costs of this suit and for such other and further relief as may be proper in the premises.

Defendant's Exhibit L

9. That plaintiff have such other and further or different relief as to the Court may seem just, proper and equitable.

/s/ JULES C. GOLDSTONE

/s/ JOHN H. TRACY
Attorneys for Plaintiff.

DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION } ss

H. L. GUMBINER, being first duly sworn, deposes and says:

That he is the plaintiff in the above entitled action; that he has read said complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

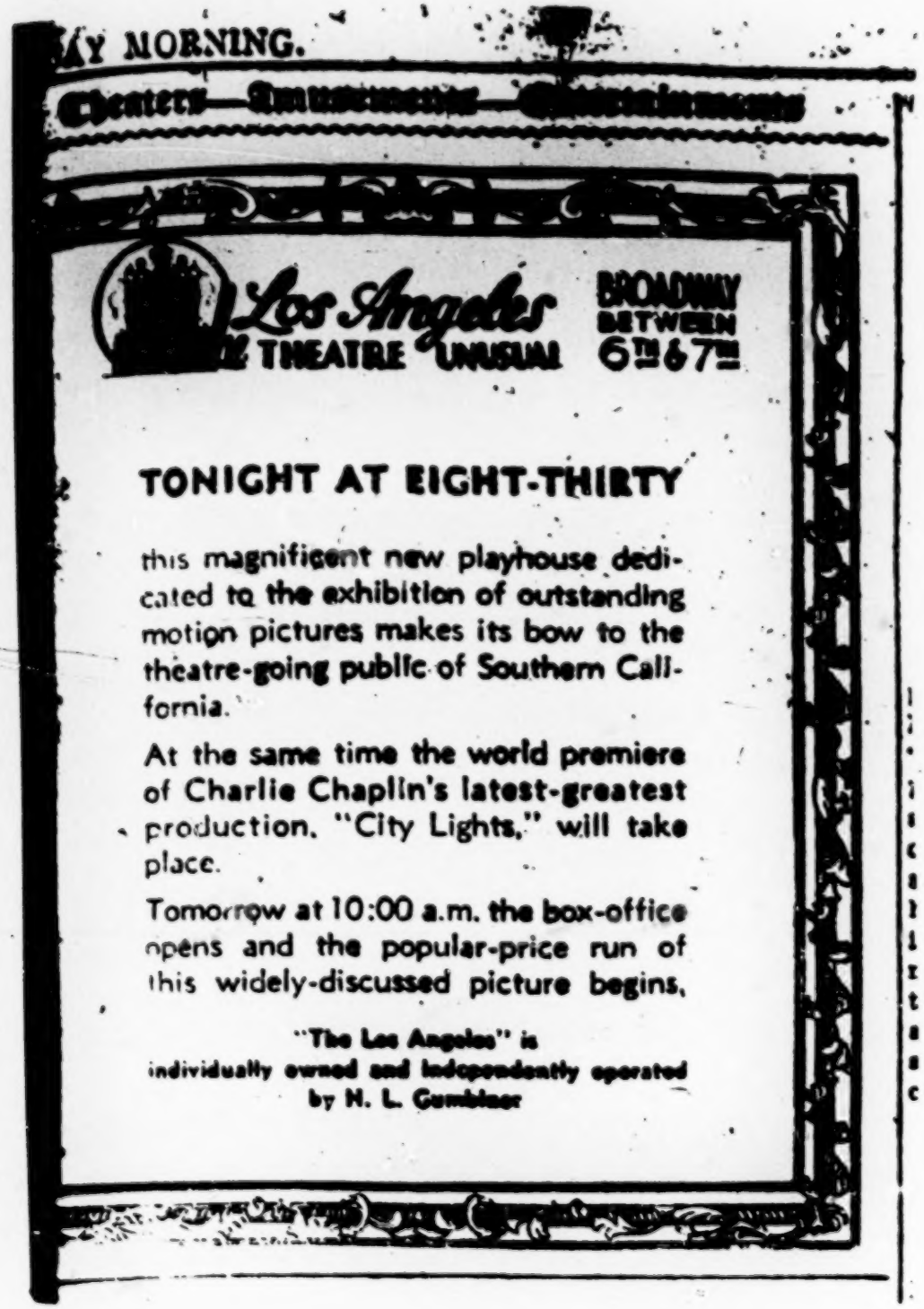
H. L. GUMBINER

Subscribed and sworn to before me
this 2nd day of February, 1935.

MABEL C. DUVALL
Notary Public in and for the County
of Los Angeles, State of California

[NOTARIAL SEAL]

Defendant's Exhibit M



...Y MORNING.

...enters—...—...

Los Angeles
THEATRE UNUSUAL

BROADWAY
BETWEEN
6TH & 7TH

TONIGHT AT EIGHT-THIRTY

this magnificent new playhouse dedicated to the exhibition of outstanding motion pictures makes its bow to the theatre-going public of Southern California.

At the same time the world premiere of Charlie Chaplin's latest-greatest production, "City Lights," will take place.

Tomorrow at 10:00 a.m. the box-office opens and the popular-price run of this widely-discussed picture begins.

"The Los Angeles" is
individually owned and independently operated
by H. L. Gumbiner

Defendant's Exhibit N

LAST NIGHT THE BRILLIANT AUDIENCE
THAT WITNESSED THE WORLD PREMIERE OF

CHARLIE CHAPLIN

in

"CITY LIGHTS"

PAID TEN DOLLARS A SEAT FOR THE PRIVILEGE!

Now you can see this, **the greatest screen entertainment ever produced by the star comedian,** at POPULAR PRICES.

With the box-office opening daily at 10:00 a. m. performances will be continuous from morning until midnight to afford everyone in Southern California an opportunity to see "the picture the world has been waiting for."

When you visit "The Los Angeles" don't fail to inspect this magnificent **theatre unusual** from the ground floor level to the top balcony. You will see innovations unique and architectural beauty unprecedented.

The Los Angeles

THEATRE UNUSUAL BROADWAY

Independently Owned and Operated by H. L. Gumbiner

Defendant's Exhibit O

IN THE

DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

H. L. GUMBINER,

Plaintiff,

vs.

FOX WEST COAST THEATRES, a corporation, Bankrupt, CHARLES P. SKOURAS, WILLIAM H. MOORE, JR. and CHARLES C. IRWIN, as Trustees in Bankruptcy of the Estate of Fox West Coast Theatres, a corporation, Bankrupt, FOX WEST COAST THEATRES CORPORATION, a corporation, PRINCIPAL THEATRES, INC., a corporation, DOWN TOWN THEATRES, INC., a corporation, COMBINED THEATRES CORP., a corporation, FOX COSMOPOLITAN THEATRE CO., LTD., a corporation, METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION, a corporation, FOX FILM CORPORATION, a corporation, PARAMOUNT PICTURES DISTRIBUTING CO., INC., a corporation, VITAGRAPH, INC., a corporation, R-K-O DISTRIBUTING CORPORATION, INC., a corporation, UNITED ARTISTS CORPORATION, a corporation, COLUMBIA PICTURES CORPORATION, a corporation, UNIVERSAL FILM EXCHANGE, INC., a corporation, FIRST NATIONAL PICTURES, INC., a corporation, CHARLES P. SKOURAS, JOHN DOE ONE, JOHN DOE TWO, JOHN DOE THREE, JOHN DOE ONE COMPANY, a corporation, JOHN DOE TWO COMPANY, a corporation, JOHN DOE THREE COMPANY, a corporation, JOHN DOE FOUR COMPANY, a corporation, JOHN DOE FIVE COMPANY, a corporation,

Defendants.

IN EQUITY

No. 520-M

STIPULATION OF DISMISSAL.

IT IS HEREBY STIPULATED AND AGREED, that the above entitled action may be dismissed with prejudice.

Defendant's Exhibit O

Dated at Los Angeles, California, this 3rd day of June, 1935.

H. L. GUMBINER
(H. L. Gumbiner) Plaintiff.

JULES C. GOLDSTONE
(Jules C. Goldstone)

JOHN H. TRACY
(John H. Tracy)
Attorneys for Plaintiff.

IT IS SO ORDERED

PAUL J. McCORMICK
District Judge.

Decree entered and recorded
Jun 6, 1935

..... Clerk

By B. B. HANSEY, Deputy Clerk

A True Copy. Jul 16 1953

Attest, Etc.

EDMUND L. SMITH, Clerk, U. S. District Court
Southern District of California

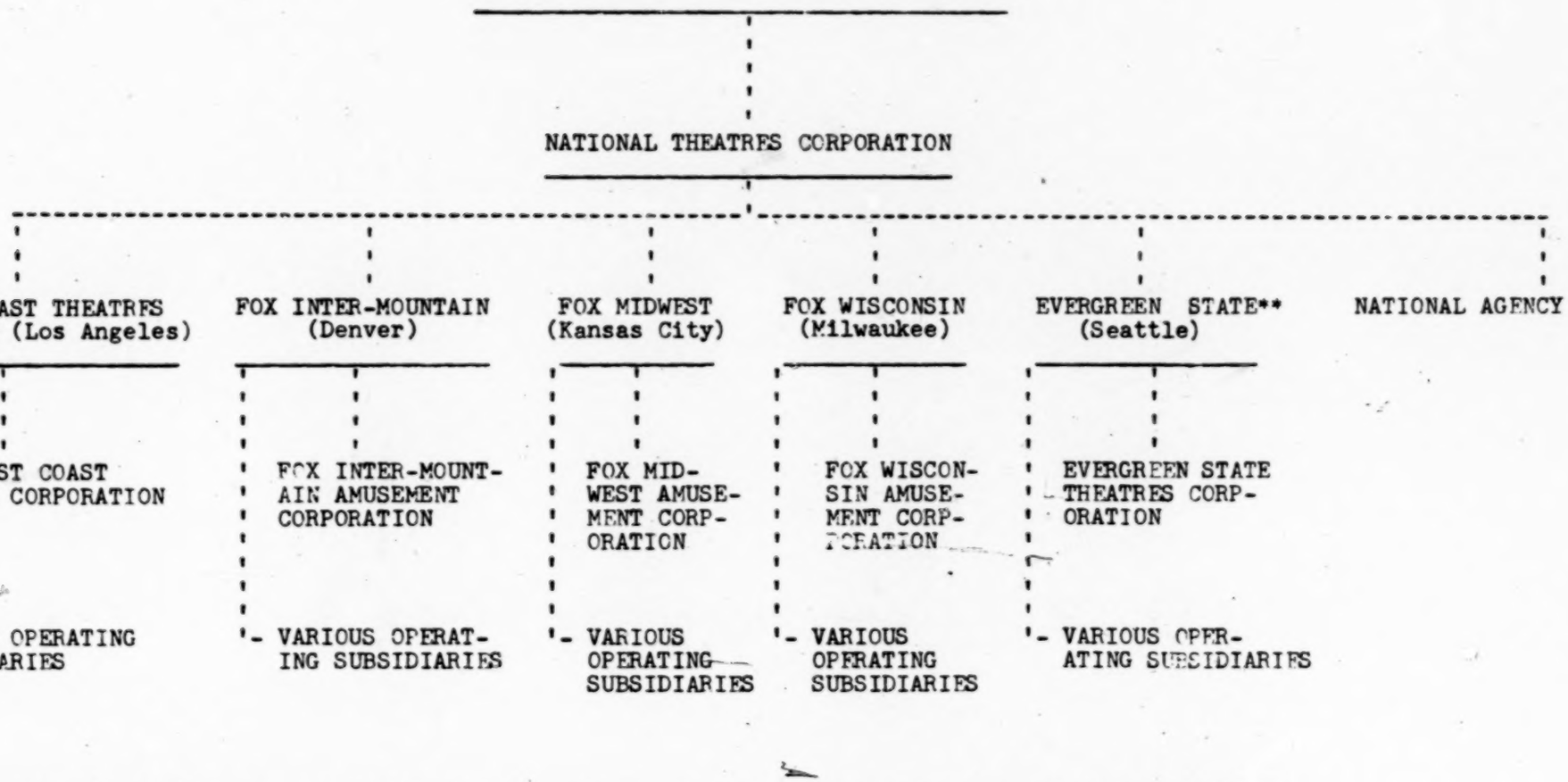
By PHILIP H. HARRIS, Deputy

Defendant's Exhibit P

CHART SHOWING CORPORATE SET-UP OF

NATIONAL THEATRES AND PRINCIPAL SUBSIDIARIES

AFTER SEPTEMBER 28, 1935



*From November 14, 1934 to July 9, 1943, The Chase National Bank of the City of New York owned 58% of National's stock. After July 9, 1943, National again became a wholly-owned subsidiary of Twentieth Century-Fox Film Corporation.

**Not wholly-owned by National, but National had a controlling interest.

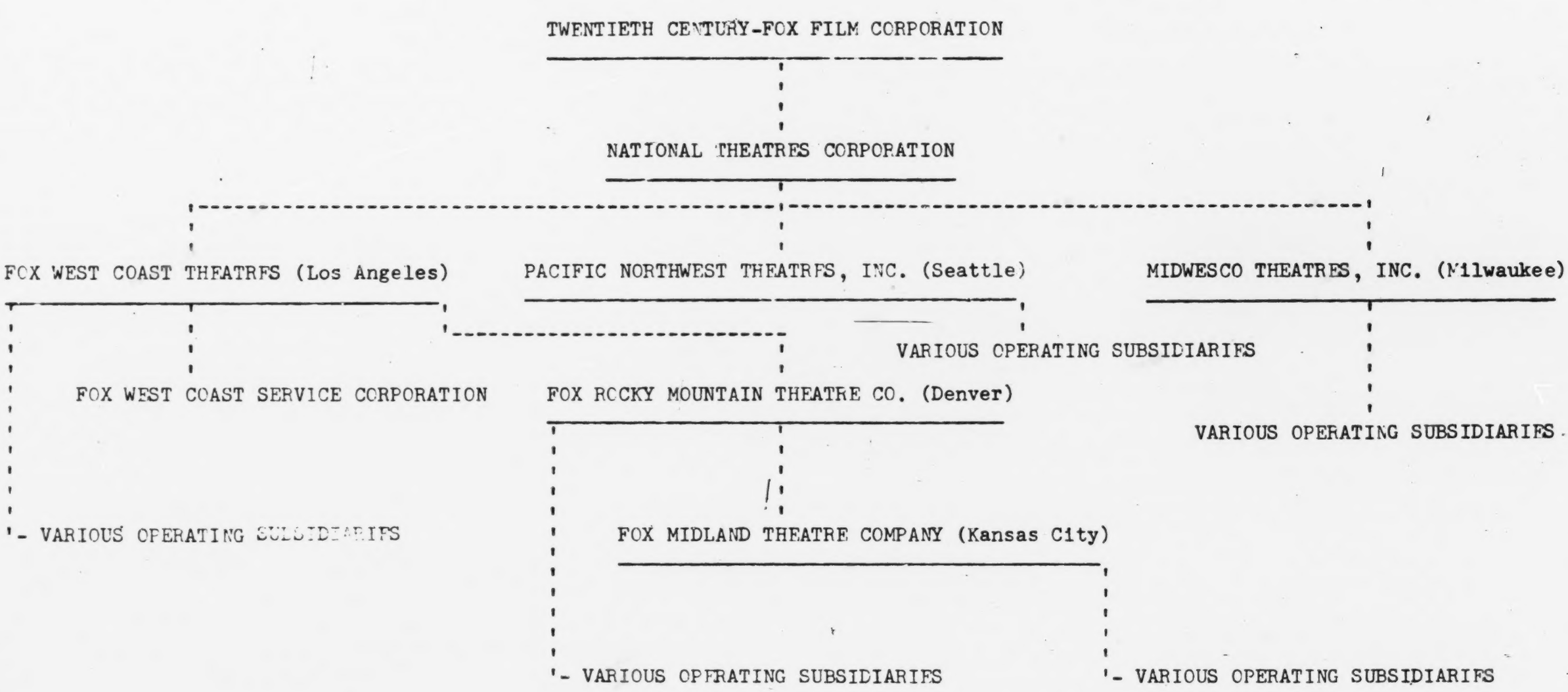
***National Theatres Amusement Co., Inc.

Defendant's Exhibit P

CHART SHOWING CORPORATE SET-UP OF

NATIONAL AND ITS PRINCIPAL SUBSIDIARIES

JANUARY 1930 TO FEBRUARY 1935*



*In February of 1933 there were a number of changes in corporate structure but they were of little importance during this period.

Defendant's Exhibit Q

IN THE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

C. S. JENSEN and J. C. VONHERBERG Plaintiffs, *vs.* WESCO CORPORATION, a corporation, et al. Defendants.	No. 346,996 DISMISSAL filed Nov. 9, 1932 J B B

TO THE CLERK OF SAID COURT:

You will enter the dismissal of the above entitled action.

Los Angeles, Cal., November 9, 1932.

LOUIS L. SWARTHE
Attorney for Plaintiff.

NOTE: Where affirmative relief is sought in Answer or Cross-complaint, Dismissal must also be signed by the attorney for the defendant.

Defendant's Exhibit Q

IN THE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

C. S. JENSEN, et al. Plaintiff, *vs.* WESCO CORPORATION, et al. Defendants.	No. 346-996 DISMISSAL

LOUIS L. SWARTHE
Attorney for Plaintiffs

Defendant's Exhibit R

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GUMBINER THEATRICAL ENTERPRISES, INC., Plaintiff, —*against*— NATIONAL THEATRES CORPORATION, Defendant.	Civil Action No. 12074

INTERROGATORIES PROPOUNDED TO PLAINTIFF

SIRS:

Pursuant to Rule 33 of the Federal Rules of Civil Procedure defendant hereby requests that plaintiff corporation, by officer or agent thereof, answer under oath within fifteen (15) days after service the following interrogatories:

1. State the name and address of each stockholder of record in plaintiff corporation on February 2, 1935, together with the number of shares of such corporation standing of record in the name of each such stockholder.

2. State the name and address of each stockholder of record in plaintiff corporation on May 22, 1935, together with the number of shares of such corporation standing of record in the name of each such stockholder.

3. State the name and address of each stockholder of record in plaintiff corporation on May 25, 1935, together with the number of shares of such corporation standing of record in the name of each such stockholder.

4. State the name and address of each stockholder of record in plaintiff corporation on June 3, 1935, together

with the number of shares of such corporation standing of record in the name of each such stockholder.

5. State the name and address of each stockholder of record in plaintiff corporation on September 5, 1951, together with the number of shares of such corporation standing of record in the name of each such stockholder.

6. State the name and address of each of the officers of plaintiff corporation on February 2, 1935.

7. State the name and address of each of the officers of plaintiff corporation on May 22, 1935.

8. State the name and address of each of the officers of plaintiff corporation on May 25, 1935.

9. State the name and address of each of the officers of plaintiff corporation on June 3, 1935.

10. State the name and address of each of the officers of plaintiff corporation on September 5, 1951.

Dated: New York, N. Y.
July 14, 1953.

Yours, etc.

DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY

By FREDERICK W. R. PRIDE
A Member of the Firm
Attorneys for Defendant
Office & P. O. Address
100 Broadway
New York 5, N.Y.

To:

CORCORAN & KOSTELANETZ
Attorneys for Plaintiff
Office & P. O. Address
52 Wall Street
New York 5, N. Y.

Defendant's Exhibit R

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

GUMBINER THEATRICAL ENTERPRISES, INC., Plaintiff, *against* NATIONAL THEATRES CORPORATION, Defendant.	CIVIL ACTION No. 12074

ANSWERS OF GUMBINER THEATRICAL ENTERPRISES, INC. TO THE INTERROGATORIES PROPOUNDED BY DEFENDANT

Annexed hereto are the answers of Gumbiner Theatrical Enterprises, Inc. to the interrogatories propounded by defendant.

Defendant's Exhibit R

		Shares of Stock
1.	February 2, 1935	
	Bank of America National Trust & Savings Association 660 S. Spring St., Los Angeles	2500
2.	May 22, 1935	
	Bank of America National Trust & Savings Association 660 S. Spring St., Los Angeles	2500
3.	May 25, 1935	
	Bank of America National Trust & Savings Association 660 S. Spring St., Los Angeles	2500
4.	June 3, 1935	
	H. L. Gumbiner, deceased	2500
5.	September 5, 1951	
	H. L. Gumbiner, deceased	2500
6.	February 2, 1935	
	H. L. Gumbiner, deceased	President
	Lee Rosenblum 928 S. Serrano Ave., Los Angeles	Vice-President
	Harry M. Rosenblum 928 S. Serrano Ave., Los Angeles	Secretary

Defendant's Exhibit R

7. May 22, 1935

H. L. Gumbiner, deceased	President
Lee Rosenblum 928 S. Serrano Ave., Los Angeles	Vice-President
Harry M. Rosenblum 928 S. Serrano Ave., Los Angeles	Secretary

8. May 25, 1935

H. L. Gumbiner, deceased	President
Lee Rosenblum 928 S. Serrano Ave., Los Angeles	Vice-President
Harry M. Rosenblum 928 S. Serrano Ave., Los Angeles	Secretary

9. June 3, 1935

H. L. Gumbiner, deceased	President
Lee Rosenblum 928 S. Serrano Ave., Los Angeles	Vice-President
Harry M. Rosenblum 928 S. Serrano Ave., Los Angeles	Secretary

10. September 5, 1951

H. L. Gumbiner, deceased	President
Cora Mogis 4809 Oakwood Ave., Los Angeles	Secretary

Defendant's Exhibit R

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } ss.:

VILLIS RANDALL, being first duly sworn, deposes and says:

That she is President of Gumbiner Theatrical Enterprises, Inc., the plaintiff in the above entitled proceedings; that the foregoing Answers to Interrogatories propounded by the Defendant are true to the best of her knowledge, information and belief.

VILLIS RANDALL

Subscribed and sworn to before
me this 21 day of October, 1953.
MARY M. COCHRANE MASON
Notary Public in and for said
County and State

Defendant's Exhibit S

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

BERTHA BUILDING CORPORATION, Plaintiff, —*against*— NATIONAL THEATRES CORPORATION, Defendant.	Civil Action No. 12073 Interrogatories

INTERROGATORIES PROPOUNDED TO PLAINTIFF

SIRS:

Pursuant to Rule 33 of the Federal Rules of Civil Procedure defendant hereby requests that plaintiff corporation, by officer or agent thereof, answer under oath within fifteen (15) days after service the following interrogatories:

1. State the name and address of each stockholder of record in plaintiff corporation on February 2, 1935, together with the number of shares of such corporation standing of record in the name of each such stockholder.

2. State the name and address of each stockholder of record in plaintiff corporation on May 22, 1935, together with the number of shares of such corporation standing of record in the name of each such stockholder.

3. State the name and address of each stockholder of record in plaintiff corporation on May 25, 1935, together with the number of shares of such corporation standing of record in the name of each such stockholder.

4. State the name and address of each stockholder of record in plaintiff corporation on June 3, 1935, together

Defendant's Exhibit S

with the number of shares of such corporation standing of record in the name of each such stockholder.

5. State the name and address of each stockholder of record in plaintiff corporation on September 5, 1951, together with the number of shares of such corporation standing of record in the name of each such stockholder.

6. State the name and address of each of the officers of plaintiff corporation on February 2, 1935.

7. State the name and address of each of the officers of plaintiff corporation on May 22, 1935.

8. State the name and address of each of the officers of plaintiff corporation on May 25, 1935.

9. State the name and address of each of the officers of plaintiff corporation on June 3, 1935.

10. State the name and address of each of the officers of plaintiff corporation on September 5, 1951.

Dated: New York, N. Y.
July 14, 1953.

Yours, etc.

DWIGHT, ROYALL, HARRIS, KOEGEL & CASKEY

By FREDERICK W. R. PRIDE
A Member of the Firm
Attorneys for Defendant
Office & P. O. Address
100 Broadway
New York 5, N. Y.

To:

CORCORAN & KOSTELANETZ
Attorneys for Plaintiff
Office & P. O. Address
52 Wall Street
New York 5, N. Y.

Defendant's Exhibit S

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

BERTHA BUILDING CORPORATION, Plaintiff, —*against*— NATIONAL THEATRES CORPORATION, Defendant.	Civil Action No. 12073 Answers

ANSWERS OF BERTHA BUILDING CORPORATION TO THE INTERROGATORIES PROPOUNDED BY DEFENDANT

Annexed hereto are the answers of Bertha Building Corporation to the interrogatories propounded by defendant.

Defendant's Exhibit S

		Shares of Stock
1.	February 2, 1935	
	Bank of America National Trust & Savings Association 660 S. Spring St., Los Angeles	750
2.	May 22, 1935	
	Bank of America National Trust & Savings Association 660 S. Spring St., Los Angeles	750
3.	May 25, 1935	
	Bank of America National Trust & Savings Association 660 S. Spring St., Los Angeles	750
4.	June 3, 1935	
	H. L. Gumbiner, deceased	750
5.	September 5, 1951	
	H. L. Gumbiner, deceased	750
6.	February 2, 1935	
	H. L. Gumbiner, deceased	President
	Robert Gumbiner 15146 Moorpark Ave., Sherman Oaks, Calif.	Sec. & Treas.
	Cora Mogis 4809 Oakwood Ave., Los Angeles	Director

Defendant's Exhibit S

7. May 22, 1935

H. L. Gumbiner, deceased	President
Robert Gumbiner 15146 Moorpark Ave., Sherman Oaks, Calif.	Sec. & Treas.
Cora Mogis 4809 Oakwood Ave., Los Angeles	Director

8. May 25, 1935

H. L. Gumbiner, deceased	President
Robert Gumbiner 15146 Moorpark Ave., Sherman Oaks, Calif.	Sec. & Treas.
Cora Mogis 4809 Oakwood Ave., Los Angeles	Director

9. June 3, 1935

H. L. Gumbiner, deceased	President
Robert Gumbiner 15146 Moorpark Ave., Sherman Oaks, Calif.	Sec. & Treas.
Cora Mogis 4809 Oakwood Ave., Los Angeles	Director

10. September 5, 1951

H. L. Gumbiner, deceased	President
Cora Mogis 4809 Oakwood Ave., Los Angeles	Secretary
H. L. Gumbiner, deceased	Treasurer

Defendant's Exhibit S

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } ss.

VILLIS RANDALL, being first duly sworn, deposes and says:

That she is President of Bertha Building Corporation, the plaintiff in the above entitled proceeding; that the foregoing Answers to Interrogatories propounded by the Defendant are true to the best of her knowledge, information and belief.

VILLIS RANDALL

Subscribed and sworn to before
me this 21 day of October, 1953.
MARY M. COCHRANE MASON
Notary Public in and for said
County and State

Defendant's Exhibit T

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

BERTHA BUILDING CORPORATION, Plaintiff, *—against—* NATIONAL THEATRES CORPORATION, Defendant.	Civil Action No. 12073
and	
GUMBINER THEATRICAL ENTERPRISES, INC. Plaintiff, *—against—* NATIONAL THEATRES CORPORATION, Defendant.	Civil Action No. 12074

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the plaintiffs and the attorneys for the defendant, without waiver of plaintiffs' objections to the materiality and relevance thereof, that the books of record of the defendant National Theatres Corporation show that all meetings of the Board of Directors, stockholders and Executive Committee from 1930 to 1949 were held as set out below.

In 1930 six meetings of the Board of Directors and one meeting of the stockholders of National Theatres Corporation were held in New York.

Defendant's Exhibit T

In 1931 nine meetings of the Board of Directors and one meeting of the stockholders of National Theatres Corporation were held in New York.

In 1932 six meetings of the Board of Directors and three meetings of the stockholders of National Theatres Corporation were held in New York.

In 1933 thirteen meetings of the Board of Directors of National Theatres Corporation were held in New York and one meeting of the stockholders was held in Delaware.

In 1934 twenty meetings of the Board of Directors, seven meetings of the stockholders and five meetings of the Executive Committee of National Theatres Corporation were held in New York.

In 1935 eight meetings of the Board of Directors and twenty-nine meetings of the Executive Committee of National Theatres Corporation were held in New York. One meeting of stockholders was held in Delaware.

In 1936 a meeting of the Executive Committee of National Theatres Corporation was held in New York on January 3rd. On April 9, 1936, a meeting of the Board of Directors was held in New York. Four meetings of the Board of Directors and one meeting of stockholders were held in New Jersey. The first Board meeting was held on June 9, 1936.

In 1937 three meetings of the Board of Directors and one meeting of the stockholders of National Theatres Corporation were held in New Jersey.

In 1938 two meetings of the Board of Directors and one meeting of the stockholders of National Theatres Corporation were held in New Jersey.

Defendant's Exhibit T

In 1939 four meetings of the Board of Directors and two meetings of the stockholders of National Theatres Corporation were held in New Jersey.

In 1940 seven meetings of the Board of Directors and one meeting of the stockholders of National Theatres Corporation were held in New Jersey.

In 1941 seven meetings of the Board of Directors and one meeting of the stockholders of National Theatres Corporation were held in New Jersey.

In 1942 nine meetings of the Board of Directors and one meeting of the stockholders of National Theatres Corporation were held in New Jersey.

In 1943 ten meetings of the Board of Directors and one meeting of the stockholders of National Theatres Corporation were held in New Jersey.

In 1944 one meeting of the Board of Directors (January 26, 1944) and one meeting of the stockholders (June 13, 1944) of National Theatres Corporation were held in New Jersey. Eleven meetings of the Board of Directors were held in New York, the first being on April 5th.

In 1945 nine meetings of the Board of Directors of National Theatres Corporation were held in New York and one meeting of stockholders was held in New Jersey.

In 1946 nine meetings of the Board of Directors of National Theatres Corporation were held in New York.

In 1947 ten meetings of the Board of Directors of National Theatres Corporation were held in New York and one meeting of stockholders was held in Delaware.

Defendant's Exhibit T

In 1948 seven meetings of the Board of Directors of National Theatres Corporation were held in New York and one meeting of stockholders was held in Delaware.

In 1949 nine meetings of the Board of Directors of National Theatres Corporation were held in New York.

Dated: New York, N. Y.
February 6, 1956.

/s/ CORCORAN KOSTELANETZ & GLADSTONE
Attorneys for the Plaintiffs

/s/ DWIGHT ROYALL HARRIS KOEGEL & CASKEY
Attorneys for the Defendant

Plaintiffs' Exhibit 19

HOLDING COMPANY SERVICE CONTRACT

Jersey City, N. J.
December 2, 1935

National Theatres Corporation,
Jersey City,
New Jersey.

Dear Sirs:–

We are rendering or propose to offer to render operating and/or supervisory services, directly or through other corporations (hereinafter referred to as "other service corporations"), to a number of your direct or indirect subsidiary corporations and other corporations and entities, owning, holding under lease or sublease and/or operating, or having an interest in the operation of, theatres, theatrical enterprises and other properties, as well as to certain of your subsidiaries and other corporations or entities having service or operating contracts or arrangements with other operating companies, in connection with the performance of such other contracts. All of your said subsidiaries and the other corporations or entities to whom we shall from time to time furnish services are hereinafter sometimes referred to as the "Serviced Companies".

You are familiar with the present form of our contracts with other service corporations, with the present form of contracts between such other service corporations and the Serviced Companies, and also with the service or operating contracts proposed to be assigned to or performed by such other service corporations, and, in order to assist us in the performance of our contemplated duties under the foregoing contracts, you have on this day assigned to us, pur-

suant to a letter agreement of assignment and assumption, all of your rights to the services of Messrs. Charles P. Skouras and Spyros P. Skouras (hereinafter called the "Managers") under a certain contract (hereinafter called the "Skouras contract"), between you and the Managers dated June 13, 1935, to the extent and subject to all the terms and conditions more particularly set forth in said letter agreement.

In the performance of our contracts with the other service corporations, we will acquire and maintain a detailed familiarity with all of the properties, affairs and business of the Serviced Companies. Our organization will include, in addition to the Managers and in addition to the other executives, officers, accountants, bookkeepers, film bookers, advertising specialists and other employees and agents required in the performance by us of operating, supervisory and other services contemplated by the various service contracts above referred to, accountants, bookkeepers, stenographers and other officers, employees and agents of a kind, character and number believed by us to be adequate, together with the services of the Managers, in providing material and valuable assistance to you in the executive and supervisory services now performed by you, and in the handling of general corporate, accounting and other financial problems arising in connection with your ownership, directly or indirectly through stock ownership, of the Serviced Companies.

We submit the following offer for our services in connection with your business and affairs, your supervision, if any of the management of the properties, business and affairs of the Serviced Companies, and in connection with the protection and enhancement of your investment therein. It is understood that in performing services herein, we will

function with your officers and subject always to the direction and control of your Board of Directors or Executive Committee.

1. We will keep ourselves informed of the daily results of theatre operation of the Serviced Companies and will furnish to you weekly statements of profit and loss of each theatre of the Serviced Companies, weekly statements of the cash position of each of the Serviced Companies, monthly statements of operations showing net income by companies and profit and loss of each theatre, budget statements and quarterly balance sheet and income statements of the Serviced Companies, including cumulative statements of theatre profit and loss by companies. We will also furnish or cause to be furnished to you such other financial statements relating to the business and affairs of the Serviced Companies as you may from time to time request.

2. We will keep ourselves informed of the properties of each of the Serviced Companies and of the nature of their respective interests therein and we will promptly advise you of any changes in said properties or in the nature of said interests, including, without limitation, rent reductions, modifications or extensions of leases, the cancellation of existing leases, the loss, sale or other disposal of other properties, and the acquisition of new leases or other properties by any of the Serviced Companies either by way of purchase of stock in other corporations, by purchase of the fee of or leasehold interest in such properties or otherwise, and will, in general, keep you informed of all changes in connection with the theatres and other properties of such Serviced Companies. We will also, if and when requested by you, prepare and deliver or cause to be delivered to you such tabulations, schedules or lists of the various theatres

or other properties from time to time owned, held under lease or sublease and/or operated by said Serviced Companies or any of them, as you may require, including, without limitation, detailed analyses of leases, fee properties, and operating arrangements or contracts.

3. We will keep ourselves informed of the corporate affairs of each of the Serviced Companies and will from time to time advise you of any changes in the personnel of the directors, officers and/or employees of such companies, of any material changes in the by-laws thereof and of any amendments to their certificates of incorporation and furnish you, from time to time, with copies of any such amendments. We will prepare and furnish to you corporate data sheets of each of said companies, showing the names of the officers and directors, the state of incorporation together with the names of states in which qualified to do business, the properties, including the nature of the corporation's interest therein, dates of annual meeting of stockholders and other pertinent corporate information.

4. We will maintain your books of account, and perform such other bookkeeping and accounting functions as your business shall require, including the furnishing of statistics for, and assistance in the preparation of, annual and other reports, tax returns and similar matters, but excluding annual audits.

5. We will study the accounting methods from time to time employed by the Serviced Companies and by or for you, and will, from time to time, make such recommendations for improvements therein as may appear to us in the interest of said companies and/or your company.

Plaintiffs' Exhibit 19

6. We will, in general, study the operation of the theatres and other properties of the Serviced Companies, the different phases of motion picture operating activities and problems, including day to day operation, film purchasing and booking, advertising, stage presentation, extensions, betterments, real estate contracts, purchases, insurance, efficiency and betterment policies, company organization, relations with employees, new developments, financing and special operating studies and investigations, and will, from time to time, advise you, or, at your request, the officers of the Serviced Companies or any of them, of any improvements which may seem to us desirable for the protection and enhancement of your investment in such companies. We will also consult with your officers, or, at your request, with the officers of any Serviced Company, or make recommendations or act as your agent with respect to the purchase, sale, lease or other disposition of properties and enterprises by you or any of the Serviced Companies, the projection or building of new theatres or other transactions of a similar nature.

7. We will at your request accept an assignment and assume the obligations of that certain lease dated December 28, 1934 between Walter G. Winne and William W. Kamm as Trustees The Union Labor Investment Corporation, as Lessor, and your corporation, as Lessee, and, in such event, will provide for you, in the State of New Jersey, such office space as you may require for the purposes of your affairs, and will also provide for you, in such office space, such accounting, bookkeeping and stenographic services, and such equipment and supplies as you may require in the day to day operation of your business.

Plaintiffs' Exhibit 19

8. We will supervise and make recommendations as to the management, leasing or renting of any stores, offices or other real property which you control and/or operate. Upon authorization from you, we will employ independent brokers and contract with them for the payment by you of the usual commissions.

9. As compensation for the services to be performed by us hereunder, you shall pay to us the sum of Three Thousand ($3,000) Dollars per week on each Friday, in advance.

This offer, when accepted by you, will become a contract between us, effective as of the close of business on September 28, 1935, to remain in effect until the close of business on December 31, 1944; provided, however, that it may be terminated by either of us at the end of any calendar month, by written notice given not less than ten (10) days prior to the end of any such month; and provided further that if the Skouras contract should at any time be terminated this contract shall cease and determine at the same time.

Very truly yours,

NATIONAL AGENCY CORPORATION

By A. S. GAMBEE
Vice President

The foregoing proposal is hereby accepted this 3rd day of December, 1935.

NATIONAL THEATRES CORPORATION

By H. C. Cox
Vice President

Plaintiffs' Exhibit 20

ASSIGNMENT OF SKOURAS CONTRACT

December 2, 1935

National Agency Corporation,
26 Journal Square,
Jersey City, New Jersey.

Dear Sirs:—

We have entered into a contract dated June 13, 1935 (hereinafter sometimes referred to as the "Skouras contract") with Messrs. Charles P. Skouras and Spyros P. Skouras (hereinafter referred to as the "Managers") under which, among other things, we are entitled to their services in connection with the supervision and operation of theatres and theatrical enterprises of our subsidiaries and business and affairs thereof as described in such contract. Your acceptance hereof will be an acknowledgment that a copy of such contract has been furnished you and that you are familiar with the terms and provisions thereof.

We understand that you are rendering or propose to offer to render operating and supervisory services, directly or through other corporations (hereinafter referred to as "other service corporations"), to various corporations or other entities operating, or having an interest in the operation of theatres, theatrical enterprises and other properties, as well as to certain other corporations or entities having service or operating contracts or arrangements with other companies and entities engaged in the operation of theatres and theatrical enterprises in connection with the performance of such contracts. All of the corporations or other entities to whom you or the other service corporations shall from time to time so render services are hereinafter sometimes referred to as the "Serviced Companies".

Plaintiffs' Exhibit 20

We are familiar with the present form of your service contracts with other service corporations, with the present forms of service contracts between such other service corporations and the Serviced Companies, and with the service contracts presently proposed to be assigned to or performed by such other service corporations.

We hereby make you the following offer:

1. We will, and upon your acceptance hereof do hereby, assign to you (without representations, covenants or warranties of any kind or character whatsoever, express or implied, and subject to all of the provisions of the Skouras contract) our rights under the Skouras contract to services of the Managers in connection with the supervision or operation of theatres and theatrical enterprises and business and affairs connected therewith operated or carried on by the Serviced Companies in the territory covered by the Skouras contract, to the extent that such supervision or operation is provided for by your contracts with the other service corporations and your contracts or arrangements, if any, and the contracts and arrangements of such other service corporations with the Serviced Companies, in the forms above referred to or in such other forms as we shall approve. The Managers in rendering services to or through you shall act not as our agents, but solely as your agents and employees and in such official or executive capacity as your Board of Directors shall determine. It is understood that notwithstanding such assignment to you, we retain all our rights and privileges under said contract, including without limitation the right to terminate the same, and that by such assignment you receive only the rights to the services of the Managers above referred to and the right to enforce performance thereof in any way not inconsistent with our rights in such connection; and further that we

Plaintiffs' Exhibit 20

shall be under no liability to you for any action or inaction on our part (even though a breach thereof) in respect of said contract or any matter covered thereby. We will advise you of any notices from the Managers under said contract.

2. By your acceptance hereof, you will be deemed to have accepted the foregoing assignment (subject to all of the provisions of the Skouras contract, including, without limitation, the provisions thereof as to the residences and principal offices of the Managers) and, subject to the provisions of paragraph 3 hereof, to have assumed and agreed to pay to the Managers on the dates when the same become due and payable, (1) the weekly salary commencing with the week beginning September 29, 1935, and (2) the annual additional compensation, if any, of the Managers provided for in the Skouras contract; provided, however, that you shall be obligated to pay only the portion of such annual additional compensation for the year 1935 for which you may be entitled to be reimbursed by the other service corporations pursuant to your respective service contracts with them; it being understood and agreed that the amount of such compensation so to be paid by you shall be reduced by the amount of any salary or other compensation theretofore paid by you or any such other service corporations to the Managers or either of them as officers of your corporation or of such other service corporations, or any of them. It is further understood and agreed that in the event that the Managers, or either of them, shall at any time perform services in connection with the theatres and theatrical enterprises and business and affairs connected therewith, operated or carried on by any of the Serviced Companies or other corporations or entities outside the territory covered by the Skouras contract, we shall reimburse you for such pro-

portion of the weekly salary and annual additional compensation, if any, of the Managers, as the approximate amount of time spent by the Managers, or either of them, in the performance of services outside the territory covered by the Skouras contract bears to the approximate total amount of time spent by the Managers under the Skouras contract.

3. We understand that all or substantially all of your income will be derived from payments made to you by the other service corporations under your said service contracts with them, and that in all probability such income will not be sufficient to cover the entire amount of the weekly salary and annual additional compensation, if any, of the Managers and also the other expenses of your corporation referred to in your said service contracts with other service corporations. We hereby agree that your assumption agreement hereinabove in paragraph 2 contained shall be subject to the payment by us to you of the weekly compensation provided for in paragraph 9 (and any and all amendments thereof) of the service contract between us executed today, a copy of which service contract is hereto annexed, marked Exhibit A; and that if we shall at any time make default in the payment of such compensation to you your sole remedy in the premises shall be to serve upon us written notice electing to terminate this agreement and upon the tenth day after the giving of such notice this agreement shall cease, determine and come to an end.

This proposal, when accepted by you, will become a contract between us effective as of the close of business on the 28th day of September, 1935 to remain in force and effect until the close of business on the Saturday nearest December 31, 1944; provided, however, that it may be

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terminated by either of us at the end of any fiscal year (as defined in your contracts with other service corporations) by written notice given at least thirty (30) days prior to the end of any such year; and provided further that if the Skouras contract shall be terminated prior to said date, as therein provided, this contract shall terminate at the same time.

If this contract be terminated for any reason whatsoever, you will forthwith reassign to us without consideration or payment all rights under the Skouras contract hereinabove assigned to you, and, thereupon, you will be relieved of all obligations under said contract or hereunder accruing after the date of such reassignment.

Very truly yours,

NATIONAL THEATRES CORPORATION

By A. S. GAMBEE
Vice President

The foregoing proposal is
hereby accepted this 3rd
day of December, 1935.

NATIONAL AGENCY CORPORATION

By H. C. Cox
Vice President

Plaintiffs' Exhibit 21

Part

Jersey City, N. J.
December 2, 1935.

Fox West Coast Agency Corporation,
1837 South Vermont Avenue.
Los Angeles, California.

Dear Sirs:

We are organized to furnish operating and/or supervisory services, directly or through other corporations (hereinafter referred to as "other service corporations"), to corporations or other entities (hereinafter sometimes called "Operating Companies") owning, holding under lease or sublease and/or operating, or having an interest in the operation of, motion picture theatres, theatrical enterprises or other properties; to corporations or other entities having service or operating contracts with Operating Companies which desire our services in connection with such contracts, and also to certain of the direct or indirect parent corporations (hereinafter sometimes called "Holding Companies") of Operating Companies.

Our organization will include theatre executives, accountants, bookkeepers, film bookers, advertising specialists, and other officers, employees and agents required in the performance of theatre operating services under this and/or other service contracts and in advising upon the different phases of motion picture theatre operating activities and problems, including day to day operating, film purchasing and booking, advertising, stage presentation, extension, betterments, real estate, contracts, purchases, insurance, accounting, company organization, efficiency and betterment studies, relations with employees, new developments, financ-

ing, and special operating studies and investigations. Our expenses hereinafter referred to will include corporate, overhead and other expenses, reasonable salaries for our officers and employees, and taxes and other charges involved in the carrying on of our business and the performance of this and other service contracts, and may also include additional compensation for one or more of such officers and/or employees calculated on the basis of the consolidated net profits of the Operating Companies serviced by us and/or others, or otherwise.

We are familiar with your usual form of service contract with Operating Companies served or to be served by you, and also with the forms of other service contracts which you propose to enter into with Operating Companies or others.

We submit the following proposal for our services in connection with your supervision and operation of theatres or theatrical enterprises or other properties of Operating Companies having service contracts with you from time to time, or of Operating Companies having contracts with corporations or other entities which have a contract with you calling for your performance of such contracts or receiving services under service or management contracts assigned to you; and in connection with the properties and affairs of Holding Companies having service contracts with you from time to time. Operating Companies having your usual form service contracts are herein referred to as "Local Companies", and those receiving your services under other forms of contracts or under assigned contracts or through other corporations above referred to are hereinafter sometimes referred to as "Serviced Companies". Holding Companies receiving your services from time to time are hereinafter referred to as "Local Holding Com-

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panies". It is understood that in performing services hereunder we will function in cooperation with your officers and employees and subject always to the direction and control of your Board of Directors, and subject also, if we shall manage or act for any Local, Serviced or Local Holding Company, to the direction and control of its Board of Directors.

1. We will keep ourselves informed of the conditions and requirements of the theatres, theatrical enterprises or other properties (serviced by you) of your Local Companies, Serviced Companies and Local Holding Companies, and will consult with and advise your officers and employees in their work. We will make recommendations for effecting improvements in operation and advise you as to policies and methods of operation which appear to us in the interests of said Companies. Our services shall include consultation and advice in regard to all services to be performed by you for said Companies and in particular will include the following, all of which (unless the context expressly otherwise indicates) shall be performed as your agent and for the account and risk of said companies:

(a) We will use our best efforts to lease, license and/or obtain for your Local and Serviced Companies motion picture films, stage talent and other theatrical productions and entertainments (hereinafter sometimes referred to as "productions") of a kind and number deemed by you and us sufficient for their theatres and theatrical enterprises, having in mind their operating policies, and to that end may negotiate and contract for productions. Contracts for productions may be made either directly with the distributors or otherwise, and either for productions for the theatres of one of such Local or Serviced Companies alone or for them and theatres of other Operating Companies.

Plaintiffs' Exhibit 21

It is understood that we may contract for productions for the theatres operated by your Local and/or Serviced Companies, for a consideration which may or may not produce a profit for the corporation or corporations producing or distributing the same, regardless of the relationship of any such corporation or any directors, officers and/or employees thereof to our corporation and/or any parents, subsidiaries or affiliates thereof.

(b) We will advise you as to the placing and renewal of fire, liability and other insurance for your Local, Serviced and Local Holding Companies and, if requested by you, will, to the extent authorized by such Companies, contract for such insurance either by individual policies on separate properties (or risks) or by blanket policies covering all or any part of the properties (or risks) of any one or more of the Operating Companies, Holding Companies or others.

(c) We will advise you as to advertising policies for the theatres and theatrical enterprises of your Local and Serviced Companies and, to the extent authorized by such Companies, will contract for such advertising space, programs, supplies and/or services as may be deemed advisable. Any contracts so authorized may also be made jointly for several Operating Companies or with any corporation approved by us advertising jointly for several Operating Companies, in either case so as to obligate each Company for a fair proportion of the cost thereof.

(d) If you so request, we will, to the extent authorized by your Local, Serviced and Local Holding Companies, contract for the making of ordinary repairs, renewals and replacements in the theatre buildings, equipment and other

Plaintiffs' Exhibit 21

properties of such Companies, including the purchase or sale of any materials or equipment required or sold in connection therewith.

(e) If you so request, we will also, to the extent authorized by your Local, Serviced and Local Holding Companies, contract for the purchase generally of theatre and/or other equipment and supplies (including, without limitation, fuel, electricity, heat, water and other similar supplies) which are necessary or desirable for the operation or maintenance of the properties and enterprises of such Companies, or for the sale of any such equipment or supplies no longer needed. If we find it possible, said Companies will receive the benefit of any lower prices resulting from quantity purchases made by us for other Operating Companies, and/or Holding Companies.

We or another party approved by us may purchase and hold in stock supplies and equipment required for the operation of theatre properties and enterprises and may then from time to time, upon requisition from your Local, Serviced and Local Holding Companies, sell to them, through us as agent, such part of such supplies and equipment as shall be required in the operation of their properties and enterprises, or for any renewals, repairs or replacements thereof, at cost plus estimated handling and carrying charges.

(f) We will also give you our services in connection with any special matters outside of the ordinary supervision or operation of theatres or other properties and enterprises, as, for example, the purchase, sale, lease or other disposition of properties or enterprises, the projection or building of new theatres, or any other transactions outside of the scope of ordinary theatre or business operation.

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2. Contracts entered into by us as your agent on behalf of your Local, Serviced or Local Holding Companies, as provided in paragraph 1 above, shall be made either in the name of such Local, Serviced or Local Holding Company by us as sub-agent of your corporation acting as agent or sub-agent of such Company, or in your name as agent or sub-agent of such Local, Serviced or Local Holding Company by us as sub-agent of your corporation, and neither we nor you shall be under any pecuniary or other liability by reason of any such contract. It is understood that we shall make contracts or take action as your agent with regard to any particular Local, Serviced or Local Holding Company only to the extent that such services or action are contemplated by the service contracts made or to be made by, or assigned to, you.

* * * *

4. We may obtain, directly or through others, such legal services and advice (outside our own organization) as we deem desirable in connection with any services to be rendered to Operating or Holding Companies by us, directly or through you or other service corporations, and, if we and you so determine, we may employ, directly or through others, one of the following firms of accountants for the purpose of auditing the books of any or all of the Operating or Holding Companies so serviced, namely, Lybrand, Ross Bros. & Montgomery, Price, Waterhouse & Co., Touche, Niven & Co., Haskins & Sells, Arthur Young & Company, Arthur Andersen & Co., or Peat, Marwick, Mitchell & Co.

* * *

This proposal, when accepted by you, will become a contract between us, effective as of the close of business on September 28, 1935, to remain in force and effect until

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December 31, 1944, provided, however, that it may be terminated by mutual agreement or by either of us at the end of any of our fiscal years by written notice given not less than thirty (30) days before the end of such year.

Very truly yours,

NATIONAL AGENCY CORPORATION

By A. S. GAMBEE
Vice President

The foregoing proposal is hereby accepted this 16th day of December, 1935.

FOX WEST COAST AGENCY CORPORATION

By CHARLES A. BUCKLEY
Vice President

Plaintiffs' Exhibit 26

HOLDING COMPANY SERVICE CONTRACTS

Los Angeles, California
December 2, 1935.

Fox West Coast Theatres Corporation,
1837 South Vermont Avenue,
Los Angeles, California.

Dear Sirs:—

We are rendering or propose to offer to render operating and/or supervisory services to a number of corporations or other entities, including, without limitation, certain of your direct or indirect subsidiaries, (hereinafter sometimes referred to as "Operating Companies") owning, holding under lease or sublease and/or operating or having an interest in the operation of, theatres, theatrical enterprises and other properties, as well as to certain of the direct or indirect parent corporations of Operating Companies, and also to certain other corporations or entities having service or operating contracts or arrangements with other Operating Companies in connection with the performance of such contracts.

We have a contract (hereinafter referred to as the "Principal Contract") with National Agency Corporation (hereinafter referred to as "National"), under the terms of which we are entitled to its advice and services in the operation or supervision of the properties or enterprises of Operating Companies and in the supervision of the business and affairs of certain of the direct or indirect parent corpo rations of Operating Companies. A copy of the Principal Contract has heretofore been furnished to you and your acceptance hereof will be an acknowledgment of your receipt

Plaintiffs' Exhibit 26

thereof and that you are familiar with and approve of the provisions of said contract. You are also familiar with the usual form of our contracts with Operating Companies and also with the services of operating contracts proposed to be assigned to or performed by us.

In the performance of our contracts with the Operating Companies, we will acquire and maintain a detailed familiarity with all of the properties, affairs and business of the Operating Companies which are your direct or indirect subsidiaries (hereinafter sometimes referred to as "Serviced Subsidiaries"). Our organization will include, in addition to the executives, officers, accountants, bookkeepers, film bookers, advertising specialists and other employees and agents required in the performance by us of operating, supervisory and other services contemplated by the various service contracts above referred to, accountants, bookkeepers, stenographers and other officers, employees and agents of a kind, character and number believed by us to be adequate in providing material and valuable assistance to you in the executive and supervisory services now performed by you, and in the handling of general corporate, accounting and other financial problems arising in connection with your ownership, directly or indirectly through stock ownership, of the Serviced Subsidiaries.

We submit the following offer for our services in connection with your business and affairs, your supervision, if any, of the management of the properties, business and affairs of the Serviced Subsidiaries, and in connection with the protection and enhancement of your investment therein. It is understood that in performing services herein, we will function with your officers and subject always to the direction and control of your Board of Directors.

1. We will keep ourselves informed of the daily results of theatre operation of the Serviced Subsidiaries and

will furnish to you weekly statements of profit and loss of each theatre of the Serviced Subsidiaries, weekly statements of the cash position of each of the Serviced Subsidiaries, monthly statements of operations showing net income by companies and profit and loss of each theatre, budget statements and quarterly balance sheet and income statements of the Serviced Subsidiaries, including cumulative statements of theatre profit and loss by companies. We will also furnish or cause to be furnished to you such other financial statements relating to the business and affairs of the Serviced Subsidiaries as you may from time to time request.

2. We will keep ourselves informed of the properties of each of the Serviced Subsidiaries and of the nature of their respective interests therein and we will promptly advise you of any changes in said properties or in the nature of said interests, including, without limitation, rent reductions, modifications or extensions of leases, the cancellation of existing leases, the loss, sale or other disposal of other properties, and the acquisition of new leases or other properties by any of the Serviced Subsidiaries either by way of purchase of stock in other corporations, by purchase of the fee of or leasehold interest in such properties or otherwise, and will, in general, keep you informed of all changes in connection with the theatres and other properties of such Serviced Subsidiaries. We will also, if and when requested by you, prepare and deliver or cause to be delivered to you such tabulations, schedules or lists of the various theatres or other properties from time to time owned, held under lease or sublease and/or operated by said Serviced Subsidiaries or any of them, as you may require, including, without limitation, detailed analyses of leases, fee properties, and operating arrangements or contracts.

Plaintiffs' Exhibit 26

3. We will keep ourselves informed of the corporate affairs of each of the Serviced Subsidiaries and will from time to time advise you of any changes in the personnel of the directors, officers and/or employees of such companies, of any material changes in the by-laws thereof and of any amendments to their certificates of incorporation and furnish you, from time to time, with copies of any such amendments. We will prepare and furnish to you corporate data sheets of each of said companies, showing the names of the officers and directors, the state of incorporation together with the names of states in which qualified to do business, the properties, including the nature of the corporation's interest therein, dates of annual meeting of stockholders and other pertinent corporate information.

4. We will maintain your books of account, and perform such other bookkeeping and accounting functions as your business shall require, including the furnishing of statistics for, and assistance in the preparation of, annual and other reports, tax returns and similar matters, but excluding annual audits.

5. We will study the accounting methods from time to time employed by the Serviced Subsidiaries and by or for you, and will from time to time, make such recommendations for improvements therein as may appear to us in the interest of said companies and/or your company.

6. We will, in general, study the operation of the theatres and other properties of the Serviced Subsidiaries, the different phases of motion picture operating activities and problems, including day to day operation, film purchasing and booking, advertising, stage presentation, extensions, betterments, real estate, contracts, purchases, insurance, efficiency and betterment policies, company organiza-

tion, relations with employees, new developments, financing and special operating studies and investigations, and will, from time to time, advise you, or at your request, the officers of the Serviced Subsidiaries or any of them, of any improvements which may seem to us desirable for the protection and enhancement of your investment in such companies. We will also consult with your officers, or, at your request, with the officers of any Serviced Subsidiary, or make recommendations or act as your agent with respect to the purchase, sale, lease or other disposition of properties and enterprises by you or any of the Serviced Subsidiaries, the projection or building of new theatres or other transactions of a similar nature.

7. We will provide for you, in Los Angeles, California, such office space as you may require for the purposes of your affairs, and will also provide for you, in such office space, such accounting, bookkeeping and stenographic services, and such equipment and supplies as you may require in the day to day operation of your business.

8. We will supervise and make recommendations as to the management, leasing or renting of any stores, offices or other real property which you control and/or operate. Upon authorization from you, we will employ independent brokers and contract with them for the payment by you of the usual commissions.

9. As compensation for the services to be performed by us hereunder, you shall pay to us the sum of Five Hundred ($500.) Dollars per week on each Friday in advance.

This offer, when accepted by you, will become a contract between us, effective as of the close of business on Septem-

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ber 28, 1935, to remain in effect until the close of business on December 31, 1944; provided, however, that it may be terminated by either of us at the end of any calendar month, by written notice given not less than ten (10) days prior to the end of any such month.

Very truly yours,

FOX WEST COAST AGENCY CORPORATION

By GEORGE TOPPER
Vice President

The foregoing proposal is hereby accepted this 17th day of December, 1935.

FOX WEST COAST THEATRES CORPORATION

By CHARLES A. BUCKLEY
Vice President

Plaintiffs' Exhibit 28

GUARANTY OF STANDARD SERVICE CONTRACT

Los Angeles, California,
September 19, 1938.

Fox West Coast Agency Corporation,
1609 West Washington Boulevard,
Los Angeles, California.

Dear Sirs:

In order to induce you to enter into service contracts in substantially the form hereto annexed with one or more of our direct or indirect subsidiaries, and to render operating, supervisory and other services to them pursuant thereto, we hereby covenant and agree with you as follows:

(a) We unconditionally guarantee the prompt and punctual payment of all compensation and other amounts which shall be payable to you under any such contracts made with such subsidiaries; and

(b) We unconditionally guarantee the prompt and punctual payment to you by our said subsidiaries of all obligations incurred by them to you for equipment and/or supplies sold to them by you, and/or for special services rendered to them by you, pursuant to the provisions of such service contracts;

and that all of the provisions hereof are for the benefit also of National Theatres Amusement Co., Inc. to the extent

that any amounts payable by our said subsidiaries under any such contracts represent or are based upon amounts payable by you on account of expenses of or your commitments to said National Theatres Amusment Co., Inc., which may enforce any of the provisions hereof to said extent.

In this connection we further agree that we will, if and at such time or times as you so determine, pay to you a deposit or deposits in anticipation of any amounts payable hereunder, the amount thereof to be mutually agreed upon between us. If any such deposit or deposits be made, it is understood that you will apply the same in payment of any sum or sums from time to time owing by us hereunder.

We hereby consent to any modification of any such service contract agreed upon between you and our subsidiary with which such contract is made, and agree that no such modification shall affect our liability hereunder, provided that our liability hereunder shall not be increased by any such modification made without our consent or approval. We hereby waive any and all demands for payment and notice of default and agree that our liability hereunder shall not be affected by any extension of time or indulgence granted to any of said subsidiaries, or by any failure to enforce against said subsidiaries any obligations hereby guaranteed. If any obligations hereinabove referred to have been or are at any time guaranteed by any other party or parties, or any deposit or deposits have been or are made in respect thereof, our obligations hereunder will be in no way affected thereby and we will have no rights, defenses or interests in respect of any such guarantees or deposits or as a result of any action whatsoever which you may take in respect

Plaintiffs' Exhibit 28

thereto, including without limitation any release or modification of any such guarantees or deposits.

Very truly yours,

FOX WEST COAST THEATRES CORPORATION

By CHARLES A. BUCKLEY
Vice President

Plaintiffs' Exhibit 29
Part

GUARANTEE OF PRINCIPAL SERVICE CONTRACT

December 28, 1944.

National Theatres Amusement Co., Inc.
444 West 56th Street,
New York, N. Y.

Dear Sirs:

In order to induce you to extend the term of the agreement between you and our subsidiary, Fox West Coast Agency Corporation, in the form of a letter dated July 14, 1938 and accepted by Fox West Coast Agency Corporation September 19, 1938 for an additional term expiring on December 25, 1954, unless terminated as therein provided, and to render services to Fox West Coast Agency Corporation pursuant thereto, we hereby covenant and agree with you as follows:

(a) We unconditionally guarantee the prompt and punctual payment when due of all compensation and other amounts which shall be payable to you under such agreement as extended.

(b) We unconditionally guarantee the prompt and punctual payment to you by Fox West Coast Agency Corporation of all obligations incurred by it to you for equipment, supplies and/or special services rendered to it by you pursuant to the provisions of such agreement as extended.

(c) We further agree that we will if and at such time or times as you so determine pay to you a deposit or deposits in anticipation of any amounts payable hereunder

Plaintiffs' Exhibit 29

in such reasonable amounts as you shall demand. If any such deposit or deposits be made it is upon the understanding that you will apply the same in payment of sums from time to time owing by us hereunder, and that upon the termination or expiration of this guarantee you will return to us any such sums not so applied or appliable.

We hereby consent to any modification of such agreement between you and Fox West Coast Agency Corporation and agree that no such modification shall affect our liability hereunder provided that our liability hereunder shall not be increased by any such modification made without our consent or approval. We hereby waive notice of any such modification and waive any and all demands for payment and notice of default and agree that our liability hereunder shall not be affected by any extension of time or indulgence granted to said Fox West Coast Agency Corporation or by any failure to enforce against it any obligations hereby guaranteed. If any obligations hereinabove referred to have been or are at any time guaranteed by any other party or parties or any deposit or deposits, our obligations hereunder will be in no way affected thereby and we will have no rights, defenses or interests in respect of any such guarantees or deposits or as a result of any action whatsoever which you may take in respect thereto including without limitation any release or modification of any such guarantees or deposits.

Very truly yours,

FOX WEST COAST THEATRES CORPORATION

By JOHN B. BERTERO
Vice President

Plaintiffs' Exhibit 31
Part

Guaranty of Service Contracts between
National Agency Corporation and
Subsidiary Agency Corporations.

Jersey City, N. J.,
December 2, 1935.

National Agency Corporation,
26 Journal Square,
Jersey City, N. J.

Dear Sirs:

In order to induce you to enter into service contracts in substantially the form hereto annexed with certain of our indirect subsidiaries, to wit: Fox West Coast Agency Corporation, Fox Inter-Mountain Agency Corporation, Fox Midwest Agency Corporation, and Fox Wisconsin Agency Corporation, and to render operating, supervisory and other services to them pursuant thereto, we hereby covenant and agree with you as follows:

(a) we unconditionally guarantee the prompt and punctual payment of all compensation and other amounts which shall be payable to you under any such contracts made with such subsidiaries; and

(b) we unconditionally guarantee the prompt and punctual payment to you by our said subsidiaries of all obligations incurred by them to you for supplies sold to them by you, and/or for special services rendered to them by you, pursuant to the provisions of such service contracts.

Plaintiffs' Exhibit 31

In this connection we further agree that we will, if and at such time or times as you so determine, pay to you a deposit or deposits in anticipation of any amounts payable hereunder, the amount thereof to be mutually agreed upon between us. If any such deposit or deposits be made, it is understood that you will apply the same in payment of any sum or sums from time to time owing by us hereunder.

We hereby consent to any modifications of any such service contract agreed upon between you and our subsidiary with which such contract is made, and agree that no such modification shall affect our liability hereunder, provided that our liability hereunder shall not be increased by any such modification made without our consent or approval. We hereby waive any and all demands for payment and notice of default and agree that our liability hereunder shall not be affected by any extension of time or indulgence granted to any of said subsidiaries, or by any failure to enforce against said subsidiaries any obligations hereby guaranteed. If any obligations hereinabove referred to have been or are at any time guaranteed by any other party or parties, or any deposit or deposits have been or are made in respect thereof, our obligations hereunder will be in no way affected thereby and we will have no rights, defenses or interests in respect of any such guarantees or deposits or as a result of any action whatsoever which you may take in respect thereto, including without limitation any release or modification of any such guarantees or deposits.

Very truly yours,

NATIONAL THEATRES CORPORATION

By A. S. GAMBEE
Vice-President

Plaintiffs' Exhibit 33

STANDARD SERVICE CONTRACT

Taft Theater Company,
Los Angeles, California.

Dear Sirs:

Experience has shown that it is uneconomical for each individual motion picture theatre company to maintain a complete and permanent organization capable of rendering all types of operating and financial service. To meet the requirements of this character of a large number of such companies through a cooperative arrangement, we are offering to furnish operating, supervisory and other services to corporations or other entities (hereinafter sometimes referred to as Operating Companies) owning, holding under lease or sublease and/or operating, or having an interest in the operation of, motion picture theatres, theatrical enterprises or other properties; to corporations or other entities having service or operating contracts with Operating Companies which desire our services in connection with such contracts, and also to certain of the direct or indirect parent corporations (hereinafter sometimes referred to as "Holding Companies") of Operating Companies which desire our services.

* * *

We have a contract (hereinafter referred to as the "Principal Contract") with National Agency Corporation (hereinafter referred to as "National") under which we are entitled to its advice and services in the operation or supervision of the properties and enterprises of Operating and Holding Companies serviced by us. National may also furnish services, either directly or through other corporations (hereinafter referred to as "other service corporations"),

Plaintiffs' Exhibit 33

to other Operating and Holding Companies not serviced by us. A copy of the Principal Contract has heretofore been furnished to you and your acceptance hereof will be an acknowledgment of your receipt of such Contract and that you are familiar with and approve of the provisions thereof, including those as to the amounts to be paid by us on account of the expenses of National and salary and/or additional compensation of its officers, agents and/or employees.

We submit the following proposal for our services (including also the services of National) in the operation or supervision of theatres, theatrical enterprises and other related properties which from time to time are directly operated, controlled or carried on by you (excepting properties and enterprises of other corporations operated by you under any service, operating or other similar contracts and excepting also properties and enterprises operated or carried on by you jointly with one or more other persons or corporations, as a partnership or joint venture). In providing and performing such services, we, as well as National, will function in cooperation with your officers and employees and subject always to the direction and control of your Board of Directors.

A. Operating and Supervisory Services.

1. As your agent and solely for your account and risk and either directly or through National, we will in general supervise the operation of all such properties and enterprises, will familiarize ourselves with, and keep ourselves informed of, the conditions and requirements thereof, and will consult with and advise your officers and employees in their work and make recommendations for effecting improvements in operation, and specifically:

* * *

Plaintiffs' Exhibit 33

(g) To the extent from time to time authorized by you, we will contract for the purchase generally of theatre and/or other equipment and supplies necessary or desirable for the operation or maintenance of your properties and enterprises, or for the sale of any such equipment or supplies no longer needed. If we find it possible, you will receive the benefit of any lower prices resulting from quantity purchases made by ourselves or National for Operating and/or Holding Companies serviced by us and/or other service corporations.

We or National or some other corporation approved by us may purchase and hold in stock supplies and equipment required for the operation of theatre properties and enterprises, and may then from time to time upon your requisition sell to you at cost plus estimated handling and carrying charges, such part of such supplies or equipment as shall be required for your properties and enterprises or for any renewals, repairs or replacements thereof.

* * *

2. Contracts entered into by us on your behalf, as provided in paragraph 1 above, shall be made in your name by us as your agent, or in our name as agent of your corporation, such signature by us as agent in either case to be made by one of our officers or agents, or by National (signing by one of its own officers or agents) as sub-agent, and neither we nor National shall be under any pecuniary or other liability by reason of any such contract.

B. Compensation for Operating and Supervisory Services.

3. As compensation for such services, you agree to pay to us your proportionate share, as hereinafter determined, of our expenses and charges (including without limitation

Plaintiffs' Exhibit 33

the amounts payable by us to National and any additional compensation payable to our officers and employees) after making the deductions hereinafter stated in respect of sums received by us and other service corporations under service or operating contracts different from that herein provided for, as follows:

* * *

4. We and/or National may obtain, directly or through others, such legal services or advice (outside our own organizations) as we deem desirable in connection with the operation or supervision of any one or more (as we may determine) of the properties or enterprises serviced by us or any of said other service corporations. We and/or National may employ, directly or through others, one of the firms of accountants specified in paragraph 1 above for our own account to audit your books and those of Holding Companies and/or other Operating Companies serviced by us.

There shall be allocated to and paid by you, in addition to any compensation provided for in subdivisions (a), (b) and (c) of paragraph 3 above, a fair proportion (as between you and other companies having service contracts contemplating allocation to them of such charges and expenses) of any charges or expenses incurred by us and/or National for any such legal and accounting services or advice rendered for or on your behalf and/or for your benefit or in connection with your affairs.

We will also make available to you, upon request, the services of ourselves and National in connection with any special matters, as for example the purchase, sale, lease or other disposition of properties and enterprises, the projection or building of new theatres, or any other transactions outside of the scope of the ordinary operation of your prop-

erties and enterprises. Our compensation for such services shall be in addition to that provided for in subdivisions (a), (b) and (c) of paragraph 3 above and shall be agreed upon between us with respect to each such matter.

* * *

This proposal when accepted by you will become a contract between us, effective as of the close of business on September 28, 1935, to remain in force and effect until the close of business on the Saturday nearest December 31, 1944, provided, however, that it may be terminated by you at the end of any contract period by written notice to us given not less than thirty (30) days before the end of such contract period, and that it may be terminated by us at the end of any fiscal year by written notice to you given not less than thirty (30) days before the end of such year.

Very truly yours,

FOX WEST COAST AGENCY CORPORATION

By GEORGE TOPPER
Vice President

The foregoing proposal is hereby accepted this 18th day of December, 1935.

TAFT THEATER COMPANY,

By C. A. BUCKLEY
Vice President